

# **NAVAL POSTGRADUATE SCHOOL**

## **Monterey, California**



## **THESIS**

**NEED FOR QUALIFIED CONTRACTING OFFICERS IN  
THE ARMED FORCES OF THE PHILIPPINES (AFP)  
MODERNIZATION PROGRAM**

by

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December 2001

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## Report Documentation Page

<b>Report Date</b> 19 Dec 2001	<b>Report Type</b> N/A	<b>Dates Covered (from... to)</b> -
<b>Title and Subtitle</b> Need for Qualified Contracting Officers in the Armed Forces of the Philippines (AFP)Modernization Program		<b>Contract Number</b>
		<b>Grant Number</b>
		<b>Program Element Number</b>
<b>Author(s)</b> Montanez, Jaime		<b>Project Number</b>
		<b>Task Number</b>
		<b>Work Unit Number</b>
<b>Performing Organization Name(s) and Address(es)</b> Naval Postgraduate School Monterey, California		<b>Performing Organization Report Number</b>
<b>Sponsoring/Monitoring Agency Name(s) and Address(es)</b>		<b>Sponsor/Monitor's Acronym(s)</b>
		<b>Sponsor/Monitor's Report Number(s)</b>
<b>Distribution/Availability Statement</b> Approved for public release, distribution unlimited		
<b>Supplementary Notes</b> The original document contains color images.		
<b>Abstract</b>		
<b>Subject Terms</b>		
<b>Report Classification</b> unclassified		<b>Classification of this page</b> unclassified
<b>Classification of Abstract</b> unclassified		<b>Limitation of Abstract</b> UU
<b>Number of Pages</b> 99		

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<b>REPORT DOCUMENTATION PAGE</b>			<i>Form Approved OMB No. 0704-0188</i>	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503.				
<b>1. AGENCY USE ONLY (Leave blank)</b>		<b>2. REPORT DATE</b> December 2001	<b>3. REPORT TYPE AND DATES COVERED</b> Master's Thesis	
<b>4. TITLE AND SUBTITLE:</b> Need for Qualified Contracting Officers in the Armed Forces of the Philippine Modernization Program			<b>5. FUNDING NUMBERS</b>	
<b>6. AUTHOR</b> Montañez, Jaime Frumencio J.				
<b>7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)</b> Naval Postgraduate School Monterey, CA 93943-5000			<b>8. PERFORMING ORGANIZATION REPORT NUMBER</b>	
<b>9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES)</b> N/A			<b>10. SPONSORING/MONITORING AGENCY REPORT NUMBER</b>	
<b>11. SUPPLEMENTARY NOTES</b> The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.				
<b>12a. DISTRIBUTION / AVAILABILITY STATEMENT</b> Approved for public release; distribution is unlimited.			<b>12b. DISTRIBUTION CODE</b>	
<b>13. ABSTRACT (maximum 200 words)</b>  <p>The purpose of this thesis is to determine the need for qualified Contracting Officers in the execution and administration of contracts formulated under the Armed Forces of the Philippines (AFP) Modernization Program. This 15-year Program is mandated by Republic Act (RA) 7898, otherwise known as the AFP Modernization Act. This law is implemented through Department of National Defense Circular (DC) No. 1 dated 06 March 2000 (replacing DC 29 dated 19 May 1996). The Circular provided adequate guidance for the conduct of major system contracting, but barely touched on the process of contract execution and administration by Contracting Officers, except for assigning this function to the Major Services under the supervision of the Chief of Staff, AFP (CSAFP). It assumes that the parties involved would infer the process of contract administration from the terms and conditions of the contract itself. Contract administration, as handled by qualified Contracting Officers, is a vital process in government acquisitions. It ensures the successful completion of the contract according to the satisfaction of the parties involved. Without this system in place, the AFP risks failure in its Modernization Program (AFPMP). This thesis ascertains the need for qualified Contracting Officers to handle the complex contracts that are sure to come out of the AFPMP. It evaluates the existing contract execution and administration structure in the AFP vis-à-vis existing guidelines to establish the need for "Contracting Officer" positions. Once established, the thesis expounds on the envisioned role of Contracting Officers as they handle the various contracting activities in the AFPMP. It also recommends the associated career paths, education, training and certification programs needed to establish the said position.</p>				
<b>14. SUBJECT TERMS</b> Contracting Officer, Contract Administration, Procurement Planning, AFP Modernization Program			<b>15. NUMBER OF PAGES</b> 99	
			<b>16. PRICE CODE</b>	
<b>17. SECURITY CLASSIFICATION OF REPORT</b> Unclassified	<b>18. SECURITY CLASSIFICATION OF THIS PAGE</b> Unclassified	<b>19. SECURITY CLASSIFICATION OF ABSTRACT</b> Unclassified	<b>20. LIMITATION OF ABSTRACT</b> UL	

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**NEED FOR QUALIFIED CONTRACTING OFFICERS  
IN THE ARMED FORCES OF THE PHILIPPINES (AFP)  
MODERNIZATION PROGRAM**

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**MASTER OF SCIENCE IN MANAGEMENT**


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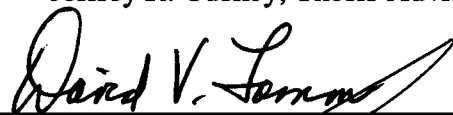
**NAVAL POSTGRADUATE SCHOOL  
December 2001**

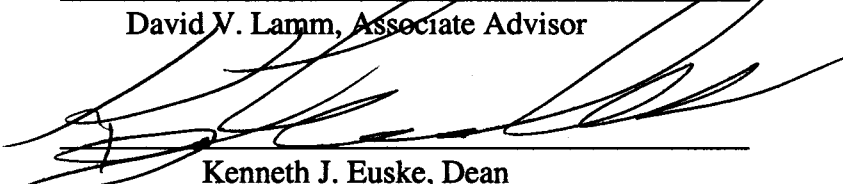
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## **ABSTRACT**

The purpose of this thesis is to determine the need for qualified Contracting Officers in the execution and administration of contracts formulated under the 15-year Armed Forces of the Philippines (AFP) Modernization Program. While its implementing rules and regulations provide adequate guidance for the conduct of major system contracting, it barely touches on the process of contract execution and administration by Contracting Officers, except for assigning this function to the Major Services under the supervision of the Chief of Staff, AFP. Apparently, it assumes that the parties involved would infer the process of contract administration from the terms and conditions of the contract itself. Contract administration, as handled by qualified Contracting Officers, is a vital process in government acquisitions. It ensures the successful completion of the contract according to the satisfaction of the parties involved. Without this system in place, the AFP risks failure in its Program. This thesis ascertains the need for qualified Contracting Officers to handle the complex contracts that are sure to come out of the Program. It evaluates the existing contract execution and administration structure in the AFP vis-à-vis existing guidelines to determine the need of establishing the “Contracting Officer” position. It then recommends the inclusion of a Contracting Officer as member of the Project Management Team at the Major Service level, who will also serve with the Bids and Awards Committee during contract negotiation at the GHQ level. The thesis then expounds on the envisioned role of Contracting Officers as they handle the various contracting activities in the Program. It also recommends the associated career paths, education, training and certification programs needed to establish the said “Contracting Officer” position.



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## ACKNOWLEDGMENTS

To Jehovah-jireh, the Lord that provides, would be my foremost reverential praise and gratitude.

I would also like to acknowledge those individuals who provided their support throughout the information gathering and writing phase of this thesis.

First of all I would like to extend my gratitude to my thesis advisors, Professor Jeffrey R. Cuskey and Dr. David V. Lamm, for their encouragement, and valuable critical comments and helpful suggestions on the preliminary draft. The “Proposed Blueprint for Polish National Acquisition Strategy”, as recommended by Dr. Lamm, did prove to be an invaluable reference for this thesis. I am also deeply indebted to Commander Cesar C. Taccad for lending me his thesis and some of his works as guide.

I express my appreciation to Brigadier General Cristolito P. Balaoing and Colonel Orlando B. Beltran for their patience and enthusiasm in answering my interview questions and providing their valuable expert comments and opinions.

I thank Colonel Felipe Tabas, Jr of the Logistics Center, Lieutenant Colonel Bienvenido Casis of the Defense Modernization Office, Lieutenant Colonel Rudy Juanito of OJ9, and Lieutenant Colonel Willy Ona of OJ4 for providing me with all the AFP and Philippine Government documents pertinent to this research.

I am grateful to Czarina Discaya for patiently soliciting, collecting and transmitting to me the needed data from the Philippines.

To Mommy and the family, maraming salamat sa lahat ng mga dalangin ninyo.

Most of all, I wish to express my deep love and gratitude to my wife, Glen, for her active support in this research. Truly, it would have been more difficult doing this without her. I thank her for her love, prayers and sacrifice.

And of course, my children... Pete, Rachel, Joshua, and Jethro who continually bugged me but who, I admit, are also my fount of strength and inspiration for this thesis.

Sa inyong lahat, maraming salamat.



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## **I. INTRODUCTION**

### **A. BACKGROUND**

In 1995, the Philippine Congress passed the Armed Forces of the Philippines (AFP) Modernization Act. The Act prescribes the restructuring of the AFP into a more capable military force armed with better weapons and equipment over a period of fifteen years [10:Sec 6]. Subsequently, the Department of National Defense (DND) issued Circular Nr. 1 (DC 1) to implement the Act on 06 March 2000 (replacing DC 29 dated 19 May 1996).

Included in the Circular is the process for the procurement of weapons and equipment. It stipulates the procedures for contract formation up to the signing of the contract by the Secretary of National Defense (SND) [14: Art 3]. However, the Circular barely touched on the process of contract execution and administration by Contracting Officers, except for assigning this function to the Major Services under the supervision of the Chief of Staff, AFP (CSAFP). Contract execution and administration is a vital process in government acquisition. Yet, little is said of the role of Contracting Officers in handling this vital process. Apparently, it assumes that the Project Management Team's technical member, who will be present in all stages of an AFP Modernization Program (AFPMP) project [7], is empowered enough to handle this vital process and would infer the process of contract implementation from the terms and conditions of the contract itself. The position of Contracting Officer is non-existent in the AFPMP.

### **B. PURPOSE**

This study will seek to ascertain the need for qualified Contracting Officers to handle the complex contracts that are sure to come out of the AFPMP. It will evaluate the existing contract execution and administration structure in the AFP vis-à-vis existing guidelines to determine whether the position of "Contracting Officer" needs to be established.

After establishing the need for "Contracting Officer" positions, it will expound on the envisioned role of Contracting Officers as they handle the various contracting

activities in the AFPMP. It will also recommend the associated career paths, education, training and certification programs needed to establish “Contracting Officer” positions.

### **C. BENEFIT OF THE STUDY**

This thesis is intended to primarily benefit the Philippine defense establishment as it deals with complex contract implementation considerations. If adopted, the study could serve as reference for future modifications to current AFP acquisition and contracting processes, particularly to the Defense Modernization Office (DMO) of the DND, which is tasked to supervise and monitor the implementation of the AFPMP [13: Sec 1].

### **D. RESEARCH QUESTIONS**

In order to accomplish the purpose of this study, fundamental research questions were developed. The primary research question is: “Is there a need to have qualified Contracting Officers in the execution and administration of contracts under the AFP Modernization Program?”

The subsidiary research questions that lead to answering the primary question are:

1. What is the present structure of contract execution and administration in the AFPMP?
2. What are the existing contract execution and administration guidelines in the AFP and are these satisfactory to handle the complex contracts that would result from the AFPMP?

What is the envisioned role of the Contracting Officers as they handle the various AFP modernization contracting activities?

4. What are the associated career paths, education, training and certification programs needed to establish the “Contracting Officer” position within the AFP?

### **E. SCOPE**

The scope of the thesis will include an in-depth review and evaluation of existing contract execution and administration structure and guidelines in the AFP, an assessment that “Contracting Officer” positions need to be established to satisfactorily handle the complex contracts that would result from the AFPMP, a description of the envisioned role of the Contracting Officers to perform the various contracting activities, and a

recommendation on the associated career paths, education, training and certification programs needed to establish the “Contracting Officer” position in the AFP. The thesis will conclude with a recommendation for the establishment of “Contracting Officer” positions and provide suggestions for amending Philippine Government laws and regulations to include “Contracting Officer” positions into the AFPMP.

## **F. METHODOLOGY**

The thesis follows a phenomenological research strategy using a theoretical approach. The researcher initially extracted data from previous theses and existing literature on the subject. Then, first hand data were gathered from interviews of key AFP officials and AFP practitioners. The data were then analyzed using both empirical and subjective assessment to determine how best to integrate the position of “Contracting Officer” into the AFPMP structure.

Essentially, the research followed the following steps:

1. Conduct an in-depth review of the acquisition and contracting process for the AFPMP through an examination of the AFP Modernization Act and its implementing rules and regulations. This was interspersed with telephonic interviews of key officials involved in the AFPMP. The purpose of the interviews was to allow for follow-up questions on items needing further clarification.

2. Conduct a thorough review of the current contract administration structure in the AFP through a perusal of Government acquisition laws and regulations. Again, the review was augmented by telephonic interviews with key officials involved in AFP procurement to clarify some points.

3. Conduct a comprehensive literature review of books, magazine articles, CD-ROM systems, Government reports, Internet-based materials and other library information resources.

## **G. ORGANIZATION**

The thesis consists of six chapters. Chapter I presents the background, purpose, scope and methodology of the research. Chapter II is a discussion on the AFP Modernization Program: the enabling law, the implementing regulations, and the defined acquisition process. Chapter III contains discussions on Procurement Planning and

Contract Administration in the Philippine Government, particularly the AFP. It presents the inferred processes, possible post-award problems, and other issues that will face the Contracting Officer. Essentially, Chapters II and III are outcomes of the literature review. Chapter IV presents the analysis and interpretation of information gathered from the study covered by the two preceding chapters. Following that, Chapter V introduces the role of the qualified Contracting Officer in the AFPMP's equipment acquisition process. It defines the Contracting Officer's responsibilities, the associated career paths, education and training needed for selection, and mode of appointment. Finally, Chapter VI presents the conclusions and recommendations of this study regarding the need for qualified Contracting Officers in the AFPMP. It also answers the research questions and suggests areas for further research.

## **II. AFP EQUIPMENT ACQUISITION AND CONTRACTING**

### **A. INTRODUCTION**

This chapter presents the literature review on the Armed Forces of the Philippines (AFP) acquisition and contracting process for the AFP Modernization Program (AFPMP). It contains a review of the pertinent statutes and regulations governing the program, a description of the acquisition process, and a discussion on how the AFP will implement the modernization contracts. The chapter aims to establish the general context within which contracting officers will plan, execute, and administer acquisition contracts.

### **B. STATUTE AND REGULATIONS**

#### **1. Republic Act Nr. 7898 (RA 7898)**

This Republic Act, also known as the AFP Modernization Act, was passed by Congress and signed into law by the President on 23 February 1995. It declares as a policy that the State shall modernize the AFP to a level where it can effectively and fully perform its constitutional mandate to defend the Republic of the Philippines [10: Sec 2]. In view of this requirement, General Headquarters (GHQ) created the AFP Modernization Board (AFPMB) through the issuance of Standing Operating Procedure (SOP) Nr. 5 on 29 May 1995 to support the planning of the AFPMP. Through the passage of Joint Resolution Nr. 28 on 19 December 1996, Congress approved the fifteen-year AFPMP.

The AFPMP has a budget of PhP331.62-billion broken down into two sub-programs: Sub-program 1 has a budget of PhP164.55-billion while Sub-program 2 has a budget of PhP167-billion. Under Joint Resolution Nr. 28 approved by both Houses of Congress on December 19, 1996, Sub-program 1, as appropriated, will have a budget allocation as follows: PhP50-billion to implement the first five years of the AFPMP, the second five years is PhP74.2-billion, the third five years is PhP37.6-billion, while the remaining five years is PhP2.8-billion. Though to be implemented over a period of 15 years, payments for amortization of outstanding multi-year contract obligations incurred under Sub-program 1 may extend beyond this period. Future years' defense program reflecting the AFP's action to keep abreast with changing security concerns and advances

in technology shall fall under Sub-program 2, which shall be funded by appropriations of future congresses [11: Sec 1&2].

Critical aspects of RA 7898 are the two sets of parameters included by the Philippine Congress to limit the possible adverse effects of the relatively large military expenditure on the economy. The first set ensures that the AFPMP will not burden the annual budget of the Government to the detriment of other socio-economic projects. The statute requires the Department of National Defense (DND) to sustain the program through the AFP Modernization Act Trust Fund. This Trust Fund shall be generated from the following [10: Sec 11]:

- a. Congressional appropriations for the AFPMP;
  - b. Proceeds from the sale, lease, or joint development of military reservations, as may be authorized by Congress, not covered by the Bases Conversion Development Authority (BCDA);
  - c. Shares of the AFP from the proceeds of the sale of military camps and reservations provided for under RA 7227;
  - d. Proceeds from the sale of the products of the Government Arsenal.
  - e. Proceeds from the disposal of excess and/or uneconomically repairable equipment and other movable assets of the AFP and the Government Arsenal;
  - f. Funds from budgetary surplus, if any, as may be authorized by Congress;
- and
- g. All interest income of the AFP Modernization Act Trust Fund.

The second set of parameters ensures that the country will economically and technologically benefit from the AFP acquisitions through reduced foreign exchange outflow, increased local employment opportunities, and enhanced technology transfer to the Philippines. As such, RA 7898 requires the Defense establishment to [10: Sec 10]:

- a. Give preference to Filipino contractors and suppliers or foreign contractors and suppliers willing and able to locate a substantial portion of production in the Philippines,

b. Incorporate as far as possible, in each contract/agreement provisions for countertrade, in-country manufacture, co-production schemes or other innovative arrangements, and

c. Include in the contract the transfer to the AFP of principal technology involved for the operation and maintenance of the equipment.

The 15-year AFPMP outlines the size and shape of the AFP during the various phases of the modernization process [10: Sec 5]. It addresses the capability development of the GHQ and the Major Services (Philippine Army, Air Force and Navy) through five interlocking components: Force Restructuring and Organizational Development; Capability, Materiel, and Technology Development, Base and Support Systems Development; Human Resource Development; and Doctrines Development. The Modernization Program includes the modernization projects under it, the priorities, the schedules, and the estimated cost of each project [10:Sec 4].

RA 7898 states that other applicable laws and regulations shall apply to the equipment acquisition process. These applicable laws and regulations are described below.

## **2. Department of National Defense Circular Nr. 1 (DC 1)**

This Circular, entitled *“Implementing Guidelines, Rules and Regulations of the AFP Modernization Program”*, issued on 06 March 2000 (replacing Circular No. 29), provides details on the objectives of the statute and defines the policies for the implementation of the AFPMP [14: Art 2]. It describes in detail the Equipment Acquisition Process (EAP) under the AFPMP.

It provides details on the objectives of the statute and defines the policies for the implementation of the five components of the Modernization Program, to include the administration of the AFP Modernization Act Trust Fund [14: Art 8].

It directs the AFP to prepare and periodically update the Five-Year Rolling Plan, which contains the list of AFPMP projects, the future years’ defense program reflecting the AFP’s action to keep abreast with changing security concerns and advances in technology, and the estimated expenditures and proposed appropriations for each project. The Five-Year Rolling Plan covers the fiscal year with respect to which it is submitted



and the four (4) succeeding fiscal years. This is submitted to the Secretary of National Defense (SND) for approval [14: Art 1].

The Circular also directs the Chief of Staff, Armed Forces of the Philippines (CSAFP) to issue implementing instructions to the different services. These include the creation of Project Management Teams (PMTs), each of which shall be responsible for a single procurement project in all its stages, except the Contract Negotiation stage; and the creation of the Bids and Awards Committees (BACs), each of which shall also be responsible for a single procurement project, but only in its Contract Negotiation stage [14: Art 3]. It is worth noting here that members of the BAC have very little training, if ever, in contract negotiations. Nevertheless, it is the BAC that is primarily tasked to select a contractor and prepare the corresponding contract for that project. A BAC is automatically dissolved once the contract for its project is approved [4].

### **3. Executive Order Nr. 262 (EO 262)**

The Office of the President issued EO 262 on 05 July 2000. It amends Executive Order No. 302 of 1996 and Executive Order No. 201 of 2000, both of which provided guidelines, rules and regulations for the procurement of goods and supplies by the national Government. This governs procurement contracts under the capability, materiel, and technology development component of the Program.

EO 262 provides guidelines in the creation of the BAC, which replaces the Pre-qualification, Bids, and Awards Committee (PBAC) to de-emphasize pre-qualification in favor of post-qualification. The post-qualification shall verify, validate, and ascertain whether the bidder with the lowest calculated bid complies with and is responsive to all the requirements for eligibility and of the bidding, using non-discretionary “pass/fail” criteria [16: Sec 4].

The primary function of the BAC, as stated in Section 5 of this Executive Order, is to determine the eligibility of prospective bidders, conduct bidding, evaluate bidding results, and recommend award of contract [16: Sec 5].

The BAC does not handle contract administration. Post-award contract administration is performed by the PMTs at the Major Service level.

#### **4. Presidential Decree Nr. 1594 (PD 1594)**

PD 1594 and its implementing rules and regulations, amended 12 July 1995, covers infrastructure and other construction contracts under the Program. Unlike EO 262, however, PD 1594 calls for the creation of PBAC (which has the same membership composition as the BAC under EO 262), but emphasizes pre-qualification of contractors for the said contracts [28: IB6].

#### **5. Executive Order Nr. 164 (EO 164) and the NEDA Board-approved Guidelines on the Procurement of Consulting Services for Government Projects**

EO 164 and the NEDA Board-approved Guidelines govern contracts for consultancy services for all component programs and projects of the AFPMP. The need for consultancy services is expected in equipment acquisition, wherein some items of equipment are highly technical and beyond the competence of AFP in-house capabilities. It will also be needed in the formulation/review of economic and financial packages [14: Art 1].

#### **6. Executive Order Nr. 120 (EO 120)**

EO 120 of 1993 and its implementing rules and regulations govern countertrade arrangements that shall be entered into. Countertrade (CT) shall be adopted as a supplemental trade tool in connection with transactions involving the importation, procurement of foreign capital equipment, machinery, products, goods, and services entitling the payment of at least US\$1-million [14: Art 3]. It is designed to compensate for foreign exchange outflow, open new markets for Philippine products and services, overcome quota and trade restrictions of other countries, and provide for technology transfer to and industrial growth for the Philippines.

CT shall refer to any of the following arrangements:

- a. Counterpurchase;
- b. Product Buy Back, where a supplier is paid for with the resultant products/goods made by the equipment procured;
- c. Offset Arrangements, where a supplier commits to introduce investments or technology transfer to the Philippines, or assist in establishing new or improving

existing industries to generate or save foreign exchange or create increased employment, which may or may not be related to the equipment/product/service procured;

d. Trade-for-Debt Swap, an outstanding and unpaid loan of the Government agency with a foreign creditor is arranged to be settled in full originally by sale of products/services to be provided by a third party rather than by payment in foreign currency; and

e. Any form of combination of the foregoing arrangements that result in the inflow to the country of foreign exchange, or saving thereof [26: Sec 2].

#### **7. Major Services' Circular on Project Management**

Another regulation that would apply during post-award contract management is the individual Services' Project Management Manual. An example of this is the Philippine Navy (PN) Circular No. 2 series 1993 [29] and its proposed replacement, the Manual on PN Ship Acquisition Project Management [23]. Although dealing primarily with project management, these regulations contain instructions and procedures that could apply to contract implementation, like production monitoring, quality assessment, cost analysis and risk management.

#### **8. Commission on Audit (COA) Regulations**

The COA regulation on Government accounting and auditing is another source of rules dealing with contract preparation and execution [8]. Although the COA Government accounting and auditing procedure provided very little guidance for the execution of supply and services contracts, it gives ample direction for the post-award management of construction contracts. Although not bearing directly on equipment acquisitions, the provisions of the COA regulations could still be applied in principle to the AFPMP. More so, the Regulation has direct relevance for the implementation of the base development component of the AFPMP, which would normally include construction projects.

The applicable provisions in the COA regulations are in the areas of Commencement of Contract Performance, Government-Furnished Property, Contract Variations, Payment and Financial Support, and Suspension, Liquidated Damages and Terminations.

As seen from the above, AFPMP contracts are classified into good/supply, infrastructure, or consultancy service contracts. Apart from good/supply contracts, which emphasizes post-qualification, all other contracts in the AFPMP still follow the former procurement process that requires pre-qualification. Telephonic interviews conducted with knowledgeable Defense officials reveal that no other agency of government, aside from the DND, emphasizes post-qualification for procurement as of yet [7].

Nevertheless, in as much as the AFPMP's procurement process centers on the acquisition of equipment and weapon systems, emphasis of this thesis would center on the AFPMP's equipment acquisition process, which is governed by EO 262.

### **C. EQUIPMENT ACQUISITION PROCESS**

Section 14 of RA 7898 provides that the AFP Procurement System shall be treated as two sequential but separate steps, each requiring the separate decision of the SND. The decision-making process for equipment acquisition starts at the appropriate Major Service level. This is the first step.

#### **1. Project Definition and Validation – The First Step**

The process starts with project definition where the Major Service concerned identifies a particular need. It creates a Project Management Team (PMT) that shall be responsible for a particular project and program under the approved AFPMP. The functions of the PMT include:

- a. Determination of the user's and system's requirement for the project;
- b. Conduct of market research;
- c. Identification of risks and proposal of alternatives to minimize them;
- d. Facilitating the implementation of the project in coordination with concerned committees, boards, offices, and agencies;
- e. Preparation of the following documents:
  - Circular of Requirements (COR), which define the operational and technical requirements of the Major Services; and

- Bid Evaluation Plan (BEP), which contains the procedure for the acquisition of an equipment or weapon system indicating the method of procurement, conduct of post-qualification of bidders and the bidding proper up to and including the award of the contract.

f. Administering contract implementation, including the preparation of periodic status reports; and

g. Ensuring proper turnover of the project to the end-user.

The minimum composition of the PMT includes the:

- Project Manager, who shall also be the Operations Officer of the project;
- Technical Officer; and
- Logistics Officer.

Though DC 1 states that the Major Service Commanders shall prescribe additional members if necessary, and for Joint Service PMTs, the AFPMB shall prescribe the PMT's composition, it is worth noting here that no Legal member has been prescribed in the PMT composition.

Rank requirement for Project Manager is 05 and 03, at the minimum, for the other members. They should have the appropriate Occupational Specialty and/or experience, and must not be due for schooling, travel, mission, or retirement within a year. Their tenure begins upon taking the oath of office and ends upon submission of Project Completion Report to the Major Service Project Management Offices (PMO) to which they shall be on Detached Service.

The Major Service Modernization Board deliberates on the documents before forwarding it to the Major Service Commander for approval. The Board will base its selection on the following criteria:

a. Responsiveness of the proposal to the operational requirements and technical specifications cited in the solicitation. The Board will reject outright proposals that do not meet minimum operational requirements;

- b. Total acquisition cost;
- c. Life cycle cost;
- d. Usage of offered weapon system or equipment by the armed forces of the source country or by the armed forces of at least two countries, pursuant to Sec 4(b) of RA 7898;
- e. Corporate and financial profile of the offeror and its track record regarding the item it is offering;
- f. Proposed after-sales service and spare parts support;
- g. The political stability of countries where the factories of the prime contractor and the sub-contractor are located;
- h. Offer of countertrade and its percentage of contract price;
- i. In-country joint venture, co-production, or similar arrangements to include transfer of technology scheme and identities of possible domestic tie-ups;
- j. In the case of used equipment, the length of time the armed forces of the source country will continue to use such equipment, other countries using it and the number carried in their inventories; and
- k. Special relations with or preferential treatment given by source country to the Philippines.

Though not specifically stated in available references on hand, it is implied that some, if not all of the above, will be spelled out in the solicitation's evaluation criteria.

The Major Service Commander then endorses the said documents to GHQ for deliberation by the AFPMB.

At the GHQ, the AFPMB reviews and validates these documents to ensure an integrated concept of implementation of the project, consistency among the solicitation requirements, notices to bidders, proposal preparation instructions, evaluation factors and sub-factors, solicitation provisions or contract clauses, and data requirements. The record of proceedings shall be appended to the recommendation for the approval of the CSAFP.

The CSAFP shall decide on the recommendations of the AFPMB and subsequently endorse the aforementioned documents to the SND for final approval.

The SND shall decide on the recommendations of the CSAFP. If approved, he issues the procurement directive for the CSAFP to implement. This ends the first step for equipment acquisition process.

## **2. Contract Negotiation - The Second Step**

Contract negotiation, which is the second step, starts at the GHQ level and marks the entry of the BAC into the procurement process. The BAC is created solely for the Contract Negotiation stage of the project.

Upon receipt of the procurement directive from the SND, the CSAFP shall establish the BAC which shall be responsible for the determination of eligibility of prospective bidders, conduct of preliminary examination of bids, evaluation of bids, post-qualification of the lowest calculated bid and recommending award of contracts. This shall be done through the Invitation to Bid (ITB), which embodies more specific requirements including financial package and CT or offset schemes.

The record keeping, planning and management of the procurement process shall be designated to the procurement unit or the administrative unit, as appropriate, of the office concerned [14: Art 3].

As stipulated in Annex “A” of the approved IRR for EO 262, the BAC shall be composed of the following:

- Chairman (regular) – At least the third ranking official of the Agency;
- Executive Officer and Secretary (regular) – Legal Officer of the office/agency/corporation. The Administrative Officer of the agency concerned may be the Executive Officer and Secretary of the BAC when the agency does not have a legal officer in its plantilla positions, or when the Legal Officer is unavailable;
- Member (regular) – Technical member designated by the Head of Agency or his authorized representative;

- Member (provisional) – At least two, with knowledge and experience in the goods/supplies/material to be bid, duly designated by the Head of Agency or his duly authorized representative on a project-to-project basis;
- Member from the private sector – To ensure the transparency of the process, one private sector qualified representative each from the following organizations: a) Philippine Chamber of Commerce; and b) End-user or non-governmental organization to be designated by the Head of office/agency/corporation concerned; both representatives shall serve only as observers [16: Annex “A”]. It is worth noting here that although this is an attempt at ensuring transparency, inclusion of members from the private sector into the BAC, even as observers, may result in future conflicts of interest. This potential problem needs to be addressed.

Upon receipt of the bid tenders, the BAC evaluates the financial and technical aspects while the Philippine International Trading Corporation (PITC), the agency mandated by virtue of EO 120 to implement the CT program in behalf of the Government, evaluates the economic packages and submits its evaluations to the BAC through the Joint Counter-Trade Working Group (JCWG). The BAC is obliged to consolidate all evaluation reports and courses its recommendation of the Most Advantageous Bid (MAB) through the CSAFP, who endorses it to the SND for approval. The decisions of the BAC pertaining to the award of contract to the MAB shall be merely recommendatory and shall be subject to the final approval/authority of the SND.

Upon approval of the MAB by SND, the CSAFP directs the BAC to negotiate the contract with the winning bidder. A Negotiated Implementing Contract (NIC) is prepared by the BAC and endorsed by the CSAFP to SND for approval. A parallel effort is done by PITC on the CT agreement. The CSAFP requests for an “approval-in-principle” of the financial terms and conditions contained in the NIC from the Department of Budget and Management (DBM) or in case payments will be charged against debt servicing, from the Monetary Board (MB) through the Department of Finance (DOF).

The SND shall issue the Notice of Award to the winning bidder. A copy of the perfected contract is then forwarded to the President for final approval.

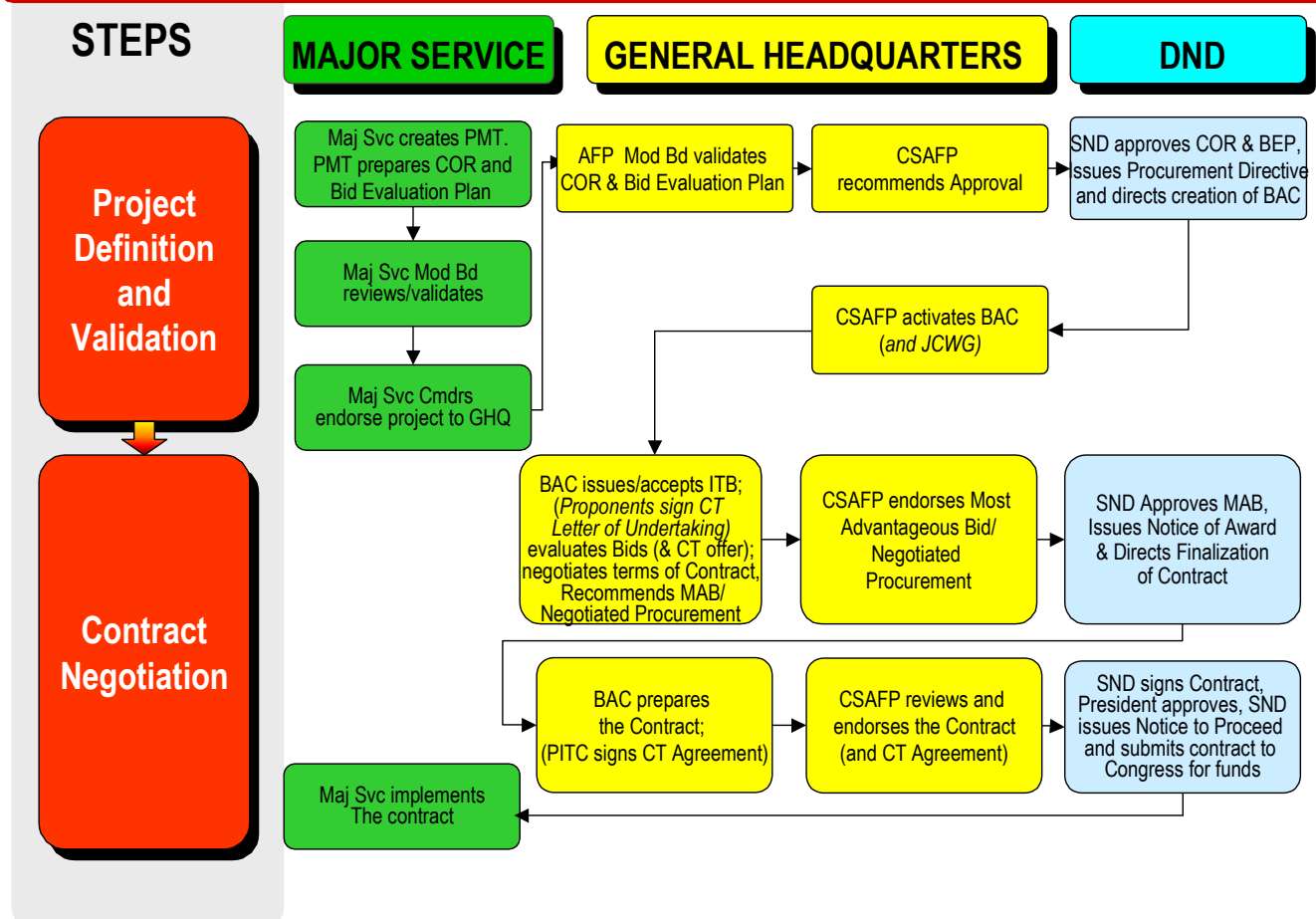


The process will enter the last stage when the President receives the contract for his approval. Upon his approval, DBM will then issue a Forward Obligation Authority (FOA) for multi-year funding. At about the same time, the contractor will sign the contract and issue a performance bond. PITC and the contractor will then sign the CT Protocol Agreement, an act that signals SND to sign the contract. The contract will then pass to the MB for approval.

Immediately after MB approval, a Notice to Proceed shall be issued by the SND, which will direct the cognizant Major Service and the PITC to implement the contract and the CT agreement, respectively. SND at this point will also submit a copy of the contract (multi-year) to Congress to enable Congress to make corresponding appropriation for the ensuing fiscal year, pursuant to Section 9(b) and (c) of RA 7898 [4; 14: Art 3].

The two-step AFP equipment acquisition and contracting process is graphically illustrated below:

# AFPMF EQUIPMENT ACQUISITION PROCESS



Source: Designed by the Author based from DC1, EO 262, and telephonic interviews conducted.

**Figure 1: Equipment Acquisition Process**

As seen from the above and the discussions on the equipment acquisition process, it is the SND that approves the CORs and BEPs during the preliminary evaluation and selection stage, even if it were the PMTs that prepared these. It is also the SND that approves the MABs and issues the Notice of Award to the winning bidder, even if it were the BACs that did the contract negotiations. Finally, it is also the SND that signs the contract, of course, after the President gives final approval to the said contract.

Thus, it is not unreasonable to assume that the SND will have a staff designated at DND to counter-check all these documents to ensure that they are in order. This staff is the Defense Modernization Office (DMO), which was created on 29 March 2000

pursuant to Department Order Nr 71 (DO 71), specifically to assist the SND in the implementation of the Program. The DMO is under the supervision of the Under Secretary for Operations (USO), and its functions include the following:

- a. Provide secretariat support for the SND in the administration of the Program;
- b. Coordinate the approval processes of all modernization-related programs and projects at the DND level; and
- c. Provide staff support for the AFPMATF Management Committee.

The DMO also has the following divisions under it: financial analysis and research, legal review, monitoring and information management, and technical evaluation [13]. A process chart illustrating the approval procedures outlined in DO 71 is attached as Appendix “A”.

It bears noting here that the equipment and acquisition process is designed to guarantee a systematic and intensive study of the AFP needs and of project proposals vis-à-vis defense policies and national defense objectives before a contract is signed. It also provides for more definitive criteria that allow for a more comparative evaluation, that is, in terms of compliance to requirements, cost effectiveness, financial package, and offset component of the proposals.

It also ensures that transparency is maintained at all times as can be seen from the number of offices involved in the decision-making process. This is to guarantee that there will be no room for rigging or favoritism with regards to the evaluation of proposals. Likewise, transparency is sustained through the proper documentation of all the activities pertaining to the conduct of the process. From the time that intentions are laid out to facilitate proper planning at all levels until the supply contract is approved and implemented, proper documentation is made to ensure that all undertakings are based on an appropriately authorized course of action.

Time delay and obsolescence, of course, is the expected payback for such a tedious process, considering the AFP’s immediate need for the subject equipment and weapon systems.

#### **D. SUMMARY**

This chapter described the two-step AFP equipment acquisition and contracting process as prescribed by RA 7898 and other applicable laws. Section 14 of RA 7898 prescribes two separate but sequential steps for equipment acquisition, each requiring the separate approval of the SND.

The first step, which is the preliminary selection and evaluation, is conducted at the Major Service level involves project definition and validation. The second step, which is the bidding, award, negotiation, and approval of contract, is conducted at the GHQ level and involves three stages: final selection and evaluation, contract negotiation, and contract implementation.

While a number of laws and regulations have been established to provide guidance on the execution of contracts, they are basically limited to contract formation and essentially end after contract award. EO 262, which provides the most detailed guidance on contract award and implementation, is still limited in scope in terms of depth and detail. Although EO 262 provides guidelines to standardize and provide uniformity to existing rules and regulations governing procurement contracts for goods/supplies/material, it makes no mention of Contracting Officers to handle these contracting activities. Apparently, it assumes that the parties involved would just infer the process of contract administration from the terms and conditions of the contract itself. This potential shortcoming forces the AFP to rely on various acquisition regulations for contract administration, but none of which is definite and comprehensive enough for system acquisitions under the AFPMP.

The next chapter will present the results of the literature review on Procurement Planning particularly in the Philippine Government context. It will also identify the post-award problems the Contracting Officer may encounter as it presents Contract Administration in a general context.

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### **III. PROCUREMENT PLANNING AND CONTRACT ADMINISTRATION IN THE PHILIPPINE GOVERNMENT**

#### **A. INTRODUCTION**

This chapter presents the results of the literature review on Procurement Planning particularly in the Philippine Government context. Procurement Planning covers the structure, execution, and administration of Government contracts, including those done in the AFP. The chapter also identifies the post-award problems the Contracting Officer may encounter as it presents Contract Administration in a general context. The objective of this chapter is to provide an overview of Procurement Planning and Contract Administration in the environment within which the Contracting Officer will operate.

#### **B. PROCUREMENT PLANNING**

EO262, which governs procurement planning in the Defense Department, stipulates that all procurement plans must take due consideration of Section 424 of the Government Accounting and Auditing Manual. Its basic content includes the decisions as to the type of contract to be employed, the extent/size of contract scopes, the procurement methods to be adopted, along with the expected time schedule for each procurement action. Procurement of goods/supplies/materials are to be undertaken according to a plan that shall take into account the lead time for the procurement process plus the manufacturing and shipping times expected so that goods are available at the time needed. Interestingly, however, EO 262 barely touches on the issue of contract administration.

##### **1. Types of Contracts**

As a general rule, the procurement of goods/supplies/materials in the Philippine Government is based on a fixed-price contract and no price adjustment/escalation is allowed. However, in cases where the DND-AFP (concerned Government implementing Agency) determines that uncertainties involved in the performance of the contract are of such magnitude that the cost is too difficult to estimate with reasonable certainty, and use of a fixed-price contract may seriously affect a manufacturer/supplier/distributor's financial stability or result in payments by the Government of contingencies that may

never occur, types of contracts other than those based on a fixed-price basis may be used. Alternatively, the DND-AFP may provide for a price adjustment/escalation provision in the contract. The procedures, including the formulas to be adopted in the computation of the price adjustment/escalation due under a contract is agreed upon between the parties and is stipulated under the related contract.

The adoption of contract types other than the fixed-price contract or the inclusion of a price adjustment/escalation clause in the contract provisions to be negotiated by the BAC is subject to the prior approval of the SND or the CSAFP, his duly authorized representative [16: Annex “B”.1].

## **2. Size of Contracts**

The size and scope of individual contracts depends on the magnitude, nature and location of the project. For projects requiring a variety of equipment, separate contracts are generally required for each type/variety.

For a project requiring similar but separate items of goods/supplies/materials, bids may be invited under alternative contract options that would attract the interest of both small and large firms. Manufacturers/suppliers/distributors are then allowed to bid for individual contract (slices) or for a group of similar contracts (package) at their option. Contract requirements are, however, not artificially divided into multiple contracts (splitting of contract package) to avoid using any source selection method or for the purpose of doing away with or circumventing control measures stated in the IRR of EO 262.

Bids under the alternative contract options are evaluated on the basis of the option provided by the concerned manufacturer/supplier, e.g., a bid submitted as a package only shall be eligible for award only as a package and shall not be eligible for award on an individual contract/per item basis. The adoption of this option including the basis of bid comparison for the same must be clearly and explicitly spelled out in the bidding documents.

The above notwithstanding, procurement of goods/supplies/materials are carried out in such a way that each bid package or contract would be of such size as to attract widespread competition and provide optimum efficiency and economy.

For routine operations and maintenance activities, the procurement of necessary supplies, materials and equipment spare parts by the DND-AFP, which are to be acquired through shopping, must at no time exceed normal three-month requirements [16: Annex “B”.2].

### **3. Alternative Methods of Procurement**

In the interest of economy and efficiency, the DND-AFP is allowed by law to adopt the following alternative methods of procurement after the SND or the CSAFP, his duly authorized representative, has approved the use of the same as indicated in the bidding documents.

#### ***a. Limited Source Bidding***

Limited Source Bidding, also known as selective bidding, is a procedure that involves direct invitation to bid by the AFP (through the BAC) from a set of pre-selected manufacturers/suppliers/distributors with known experience and proven capability on the requirements of the particular contract. The BAC directly sends to the pre-selected bidders the invitation to bid, which already indicates the relevant information required to enable the bidders to prepare their bids as prescribed under the pertinent provisions of the IRR for EO 262. Limited source bidding is employed by the AFP under any of the following conditions:

- Procurement of highly specialized types of goods/supplies/materials where only a few manufacturers/suppliers/distributors are available who could maintain a competitive position, such that resorting to the open competitive bidding method will not likely result in any additional manufacturers/suppliers/distributors participating in the bidding;
- Procurement of relatively small additions to an existing fleet of equipment where a few manufacturers/suppliers/distributors are well established and who provide satisfactory after-sales services;
- Procurement of major capital equipment/components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the subject equipment/components as a whole; and



- Procurement of goods involving relatively small amounts, i.e., amounts involving P1,000,000 or less, where the cost and time of publicly advertising the bidding is not justifiable. Also, splitting of contracts is not to be resorted to simply meet the maximum amount and avoid public bidding. “Splitting of contracts” happens when two (2) or more contracts for similar goods/supplies/materials are made in favor of one dealer or supplier within one (1) month of each other and analogous cases.

***b. Direct Contracting***

Direct contracting, or sole source procurement, is a procedure that does not require elaborate bidding documents. The selected manufacturer/supplier/distributor is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. The AFP resorts to direct contracting under any of the following conditions:

- Procurement of items of proprietary nature which can be obtained only from the proprietary source, e.g., when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- Those sold by an exclusive dealer or manufacturer that does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.
- When the procurement of critical equipment/components from a specialist manufacturer/supplier/distributor serves as a precondition of a contractor responsible for the erection of the project for his guarantee of project performance;
- For purposes of maintaining standards, such as a purchase involving a small addition to an already existing fleet of equipment; and
- In emergencies where procurement must be immediately accomplished regardless of cost. Emergencies are defined as those situations where there is imminent danger to life and/or property as determined by the AFP. Emergency procurements must not exceed a monthly amount of four percent (4%) of the AFP’s annual expenditure program for supplies and materials out of the appropriations allotted for maintenance and other operating expenses, except as may be authorized by the

president upon the joint recommendation of the Department of Budget and Management and the Commission on Audit.

***c. Repeat Order***

Under this method, acquisition is made on additional quantities from the manufacturer/supplier/distributor who provided the same items under a contract previously awarded through open competitive bidding. Repeat orders can be resorted to by the AFP only in cases where the manufacturer/supplier/distributor who was selected in the previous bidding is clearly superior to the other bids not only in terms of the price quoted but also in terms of equipment reliability, availability of spare parts, after-sales service and delivery period, among others. Repeat orders are likewise subject to the following conditions:

- Contract Prices of the repeat order must be the same as or lower than those in the original contract, provided that such prices are still the most advantageous to the government after price verification;
- The repeat order will not result in splitting of requisitions or purchase orders;
- Repeat orders may be availed of only within a six (6) month period from the date of the original purchase; and
- The repeat order does not exceed the quantity in the original contract.

***d. Shopping***

Shopping is a method of procurement whereby the AFP simply requests the submission of price quotations for the goods/supplies/materials to be procured directly from manufacturers/suppliers/distributors of known qualifications. To ensure competitive prices, the BAC concerned can obtain quotations from at least three (3) manufacturers/suppliers/distributors, provided that the prohibition against splitting of contracts is equally applicable to this alternative method of procurement. Shopping is employed when procuring readily available off-the-shelf goods or standard specifications goods that are small in value, i.e., amounts of P1,000,000 or less.

*e. Negotiated Procurement*

Negotiated procurement may be employed by the AFP only in the following cases as determined by the SND:

- Where there has been failure of competitive bidding for the second time as provided by the IRR for EO 262;
- Where the existing contract has been terminated in accordance with the pertinent provisions of the said IRR and other existing laws, rules and regulations;
- Whenever the goods/supplies/materials are to be used in connection with a project or activity which cannot be delayed without causing detriment to public service; and
- Whenever the purchase is to be made from another office/agency/corporation of the Government [16: Annex “C”].

**4. Bid/Tender Documents**

The bid/tender documents basically include:

- a. The Instructions to Bidders, which establishes the rules of the bidding, and as much as possible, must be clear, comprehensive and fair to all prospective bidders;
- b. The Conditions of Contract, which contains the provisions that clearly define the basic and legal responsibilities of and relationships between the parties involved; and
- c. The Technical Specifications, which describes all the essential features of the item(s) to be procured.

Though not specifically stated in available references on hand, the source selection criteria are expected to be included in the bid/tender documents.

Any non-conformity to these essential features is treated as a major deviation and would render the bids as non-responsive. If particular standards to which goods/supplies/materials must comply are cited, the specifications must state that goods meeting other authoritative standards, which ensure an equal or higher quality than the

standards mentioned will also be accepted. Further, specifications will be based on performance requirements, and, as a general rule, reference to brand names, catalogue numbers or the like is avoided unless this is deemed necessary to ensure inclusion of certain essential features [16: Annex “D”].

## **5. Contract Termination**

### ***a. Termination for Default***

If the manufacturer/supplier/distributor refuses or fails to perform any of the provisions of the contract with such diligence as will ensure its completion within the time specified in the contract, or after any extension thereof, still fails to timely satisfy the contract provisions, or commits any other substantial breach of the contract, the AFP will notify the manufacturer/supplier/distributor in writing of the delay or non-performance. If not cured in the time specified in writing by the AFP, it may terminate the manufacturer/supplier/distributor's right to proceed with the contract or such part of the contract to which there has been a delay or a failure to properly perform.

In the event that such termination applies to the remainder of the contract, the Government can impose the appropriate sanctions and may proceed to contract out the remaining works/items through negotiated procurement. In case the termination applies only to portions of the remaining works/items, the Government may likewise resort to negotiated procurement to acquire the terminated portions of the contract and the original manufacturer/supplier/distributor will be held liable for the excess in the costs to be incurred by the Government for the portions terminated.

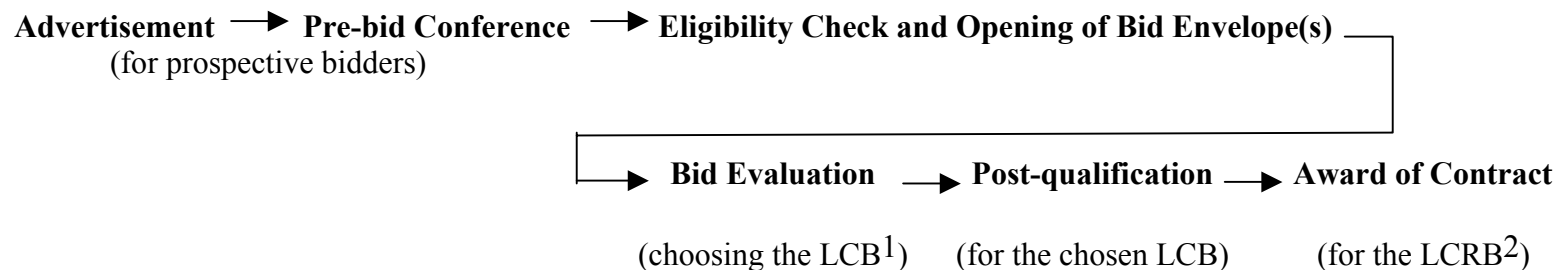
### ***b. Termination for Convenience***

The AFP may, when the interests of the Government so require, terminate the contract in whole or in part, for the convenience of the Government. In this case, the AFP gives a written notice of the termination to the manufacturer/supplier/distributor specifying the part(s) of the contract terminated and when termination becomes effective.

The manufacturer/supplier/distributor should incur no further obligations in connection with the terminated work. On the date set in the notice of termination, it will stop work to the extent specified. The manufacturer/supplier/distributor should also terminate outstanding orders and subcontracts as they relate to the terminated work and

settle the liabilities and claims arising out thereto. Moreover, the manufacturer/supplier/distributor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so [16: Annex “K”].

**Figure 2: Summary of Procurement Process for Goods/ Supplies/Materials  
as presented in the IRR of EO 262**



Generally, Government procurement of goods/supplies/materials requires prospective bidders to simultaneously submit their eligibility and bid requirements. Bid envelopes are opened immediately upon determination of eligible bidders. The Bidding Process generally uses the 2-envelope system and is done in two steps. The first bid envelopes of eligible bidders are opened to determine the bidders' compliance with specific requirements, e.g., whether all of the required documents are present in the first envelope. In case any of the requirements are missing in the first envelope, the Bids and Awards Committee disqualifies the bidder concerned outright and immediately returns to said bidder the second envelope unopened. The second envelopes are opened only for bidders who have complied with the submission of requirements in the first envelope.

Only complying bids undergo detailed evaluation. Based on the detailed evaluation, bids are ranked in the ascending order of their total calculated bid prices as evaluated and corrected for errors, discounts, and other minor modifications. The bid with the lowest total calculated price as so evaluated and corrected is designated as the "lowest calculated bid" and the bidder concerned is subjected to post-qualification to check for the responsiveness of said bid. The contract is awarded to the Lowest Calculated Responsive Bid.

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<sup>1</sup> LCB – Lowest Calculated Bid

<sup>2</sup> LCRB – Lowest Calculated Responsive Bid

### **C. POST-AWARD PROBLEMS**

The approval and signing of the contract by both parties does not end contract management. In fact, as long as agreements or actions stipulated in the contract are not yet complete, interaction continues and its intensity may even increase. Negotiations may continue between parties until the last item is delivered and payment made. However, in spite of all these, the issue of post-award contract administration is barely covered in Philippine laws. Little guidance is provided. Apparently, it assumes that the parties involved would infer the process of contract implementation from the terms and conditions of the contract itself. Though the Government, specifically the AFP, has had little experience with these post-award problems, experiences of other local and foreign Government agencies indicate the potential of these being faced by the AFP in the future.

Needless to say, problems do oftentimes come up during the transactions and these have to be resolved to complete the contract satisfactorily. The following are critical post-award problems identified from acquisition cases given in the book of John W. Whelan, *Federal Government Contracts*, that could routinely arise during contract performance:

- **Non-Compliance to Contract Specification**

Non-compliance of contractors to the specification of the contract is a crucial problem since it leads to contract failure.

- **Disagreement on Contract Modifications and Equitable Adjustments**

Sometimes the terms and conditions of the contract itself, due to mistakes, changes in technology, increase in material cost, or other causes, hinders contract performance. In these instances, changes to the contract may have to be made. It is during the modification process that often misunderstanding occurs between the contracting parties.

- **Change Orders and Engineering Change Proposals**

At other times, hindsight would dictate the need to make necessary changes, modifications or adjustments to contract specifications to correct overlooked requirements or even to satisfy new/additional requirements laid out by the end-user(s).

This could cause possible misunderstanding between the contracting parties and could lead to performance delays and/or default.

- **Disagreement in the Result of Inspection and Warranty of Deliverables**

Problems with the contract could still arise even after production because of conflicting claims regarding inspections and warranties. This predicament is usually characterized by the exchange of accusations regarding who is at fault for the deficiencies in the product and therefore should be penalized for the deficiency.

- **Settlement of Claims**

Most disagreements lead to a contractor or the government filing a formal claim. This could result in a dispute and eventually to a costly litigation that drains the resources of both parties and jeopardizes the successful completion of the contract.

- **Contractor Financial Difficulty and Bankruptcy**

Sometimes, a contractor may develop acute cash-flow problems because of the large disbursements required for some government projects. To alleviate this situation, the Government may resort to financial assistance plans for contractors. The Government may do this to minimize the risk of contractor default or bankruptcy.

- **Issues with Government-Furnished Property**

This problem ranges from issuance of government property to management, accounting, and disposal of the property. Untimely delivery of government-furnished property normally leads to government liability pursuant to the terms of the contract. In addition, mismanagement by the contractor could lead to loss, damage or destruction of the property. Thus, it is reasonable for the government to place some importance on this issue.

- **Subcontractors and Privity of Contract**

Since a contract is an exclusive agreement between parties, the government cannot deal directly with the subcontractors. The government, because of privity of contract, has to deal only with the prime contractor, even on matters that only concerns



the subcontractor. This could easily lead to miscue and misunderstanding that in some cases results in grave problems in contract performance.

- **Importance of Contractor Production for National Defense**

Sometimes a financially troubled contractor or a contractor in a disadvantaged contractual position may be required to continue production for national defense despite its unfavorable business position. In these cases, the government may have to provide or allow deviations, waivers, modifications, or assistance to allow continuation of production despite the fact that some provisions of law may prohibit it. If the situation is not remedied, the contractor could lose the ability or the capacity to produce the needed item thereby placing the defense of a nation in jeopardy. [14: pp 301-303]

Each problem presented above may critically impact contract performance. Though they were drawn exclusively from U.S. experiences through the years, this would not mean that other countries such as the Philippines would not experience such problems during contract implementation.

Brigadier General Cristolito P. Balaoing, the Deputy Chief of Staff for Capability, Materiel and Technology Development, J9, has pointed out in his interview that, so far, there are very few complications or difficulties that have been encountered in the implementation of earlier contracts the AFP has entered into. Still, he pointed out that this should not be taken as a sign that all would be well for always. As the AFPMP develops, he insightfully perceived that possible complications and problems might be encountered. Therefore, it is important that the Contracting Officers who may be tasked to handle projects for the AFPMP need to be qualified to recognize and handle these potential post-award problems. Though little guidance is provided on contract implementation in Philippine laws, it still does provide a process for resolving post-award problems, which could serve as guide to the Contracting Officers [31].

#### **D. CONTRACT ADMINISTRATION**

The Office of Federal Procurement Policy, in its *Guide to Best Practices for Contract Administration*, described contract administration as involving those activities performed by Government officials after a contract has been awarded to determine how well the Government and the Contractor performed to meet the requirements of the

contract. It encompasses all dealings between the Government, as represented by the Contracting Officer, and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved. As such, contract administration constitutes that primary part of the procurement process that assures the Government gets what it paid for.

In contract administration, the focus is on obtaining supplies and services, of requisite quantity, on time, and within budget. While the legal requirements of the contract are determinative of the proper course of action of Government officials in administering a contract, the exercise of skill and judgment is often required in order to protect effectively the public interest.

The specific nature and extent of contract administration varies from contract to contract. It can range from the minimum acceptance of a delivery and payment to the contractor to extensive involvement by program, audit and procurement officials throughout the contract term. Factors influencing the degree of contract administration include the nature of the work, the type of contract, and the experience and commitment of the personnel involved. Contract administration starts with developing clear, concise performance-based statements of work to the extent possible, and preparing a contract administration plan that cost effectively measures the contractor's performance and provides documentation to pay accordingly.

Post-award orientation, either by conference, letter or some other form of communication, should be the beginning of the actual process of good contract administration. This communication process can be a useful tool that helps Government and Contractor achieve a clear and mutual understanding of the contract requirements, helps the Contractor understand the roles and responsibilities of the Government officials who will administer the contract, and reduce future problems. It is helpful to have a pre-meeting with applicable program and contracting officials prior to post-award orientation conferences so that there is a clear understanding of their specific responsibilities and restrictions in administering the contract. Items that should be discussed at the pre-meeting include such things as the authority of Government personnel who will

administer the contract, quality control and testing, the specific contract deliverable requirements, special contract provisions, the Government's procedures for monitoring and measuring performance, contractor billing, voucher approval, and payment procedures.

Where appropriate, an alternative dispute resolution (ADR) technique known as "partnering" should be discussed with the Contractor to help avoid future contract administration problems. Partnering is a technique to prevent disputes from occurring. It involves Government and contractor management staff mutually developing a "plan for success", usually with the assistance of a neutral facilitator. The facilitator helps the parties establish a non-adversarial relationship, define mutual goals and identify the major obstacles to success for the project. Potential sources of conflict are identified, and the parties seek cooperative ways to resolve any disputes that may arise during contract performance. The process results in the parties developing a partnership charter, which serves as a roadmap for contract success. Many agencies have successfully used partnering on construction projects and are now beginning to apply these principles in the automated data processing/information resources management area.

Good contract administration assures that the end users are satisfied with the product or service being obtained under the contract. One way to accomplish customer satisfaction is to obtain input directly from the customer through the use of customer feedback surveys. These surveys help to improve contractor performance because the feedback can be used to notify the contractor when specified aspects of the contract are not being met. In addition, the contracting and program officials can use the information as a source of past performance information on subsequent contract awards. Customer satisfaction surveys also help to improve communications between the procurement, program, and contractor personnel [25].

## **E. SUMMARY**

This literature review describes in detail the procurement planning process, particularly in the Philippine Government context. It presents the basics of what the Contracting Officer will decide on in terms of contract types to be employed, contract scopes, procurement methods to adopt, along with the expected time schedule of each

procurement action. Since little guidance was provided on contract administration, the United States Government's perspective on the issue was examined. Post-award problems the Contracting Officer may likely encounter were presented, along with an overview of the purpose for contract administration. Here, it was shown that the primary purpose of contract administration is to protect the interests of the Government during contract performance. Properly implemented, contract administration helps ensure that the Contractor delivers the product in the right quality, at reasonable cost and within schedule.

The next chapter will present the analysis and interpretation of information gathered from the study covered by the two preceding chapters.

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## **IV. ANALYSIS**

### **A. INTRODUCTION**

The preceding chapters demonstrate that the DND-AFP has to adhere to various Government laws and sets of regulations in order to implement contracts according to the intent of the AFP Modernization Act. This is because the AFP does not have a single, comprehensive system to administer its mostly complex modernization contracts.

While Chapter II described the two-step AFP equipment acquisition and contracting process as prescribed by RA 7898 and other applicable laws, it had to adhere to a number of other laws and regulations established to provide guidance on the execution of contracts. It is, however, silent on who would be the specific entity responsible for the planning, execution, and administration of the modernization contracts.

Chapter III, on the other hand, describes in detail the procurement planning process, particularly in the Philippine Government context. It presented the basics of what the Contracting Officer will decide in terms of contract types to be employed, contract scopes, procurement methods to adopt, along with the expected time schedule of each procurement action. Nevertheless, little guidance was provided on contract administration. Likewise, post-award problems the Contracting Officer may likely encounter were presented, along with an overview of the purpose for contract administration.

This chapter provides the first step in introducing the need for Contracting Officers to be established and integrated into the AFPMP. It presents the analysis and interpretation of information gathered from the study covered by the two preceding chapters.

### **B. ANALYSIS**

#### **1. On Limitations of Existing Laws and Guidelines**

Examination of the AFP equipment acquisition process together with attendant laws, guidelines and regulations pertaining to procurement planning in the Philippine Government reveal that these guidelines, though detailed, are basically limited to contract

formation and essentially silent after contract award. EO 262, which provides the most detailed guidance on contract award and implementation, is still limited in scope in terms of depth and detail. Although EO 262 provides guidelines to standardize and provide uniformity to existing rules and regulations governing procurement contracts for goods/supplies/material, it makes no mention of Contracting Officers to handle these contracting activities. Stated previously, it assumes that the parties involved would just infer the process of contract administration from the terms and conditions of the contract itself. This potential shortcoming forces the AFP to rely on various acquisition regulations for contract administration, but none of which is definite and comprehensive enough for system acquisitions under the AFPMP.

The above process, plus the fact that no qualified Contracting Officer is assigned to handle contract negotiation and administration, does not bode well for the AFPMP.

The PMT, while involved from project definition till its submission of the Project Completion Report to the cognizant Major Service PMO, will be excluded during contract negotiation. On the other hand, the BAC, while at the forefront in contract negotiation, starts its involvement only after the SND approves the COR and BEP, requisite documents that are vital references for the contract negotiation phase. This would mean no continuity of corporate knowledge throughout the entire acquisition process.

## **2. On Post-award Issues**

The approval and signing of the contract by both parties does not end contract management. In fact, as long as agreements or actions stipulated in the contract are not yet complete, interaction continues and its intensity may even increase. Negotiations may continue between parties until the last item is delivered and payment made. However, in spite of all these, the issue of post-award contract administration is barely covered in Philippine laws. Little guidance is provided. Though the Government, specifically the AFP, has had little experience on these post-award problems, experiences of other local and foreign Government agencies indicate the potential of these being faced by the AFP in the future.

Some of the potential post-award issues include:

- **Production Surveillance and Quality Assurance**

The AFP has practically no oversight over a contractor's production process. Its only control on quality is during the acceptance of the item. Yet, it may waive this right by simply relying on the supplier's written certification stating that the item was inspected, tested and accepted according to the quality control process of the manufacturer. This is so because the AFP lacks the necessary resources and technical expertise to validate the manufacturer's quality control processes.

- **Inspection and Acceptance**

Though the AFP can reject deliveries that do not comply with specifications set, there is a possibility that the AFP may tend to waive this right due to budgetary constraints, particularly for products manufactured overseas. As above, the AFP may choose not to send test observers and instead rely on certified contractor test reports. However, the AFP would still need to determine the adequacy of contractor quality assurance systems.

- **Subcontracting and Technology Transfer**

The AFP Modernization Law requires the effective transfer of technology from foreign contractors to the Philippines. Technology transfer spells economic benefits for the Philippines. Yet, this would mean vigilance in quality assurance. As the local sub-contractors produce follow-on products in the Philippines, this would require the same quality as those produced abroad by the prime contractor. Moreover, this would require good working relationships between the contracting parties to minimize potential risks such as reduced product quality, breach of licensing agreement, or potential losses in capital investment.

- **Promptness of Payment to Contractors**

Payment delays may compel contractors to avoid doing business with the AFP, or to a lesser extent, impose penalties and conditions that may make future procurements too risky and costly for the Government. Avoidance of such delays would require close coordination among Government agencies.



Still, another problem in payment is the volatility of the exchange rate. While payment for major systems importations are in US Dollars or other foreign currency, local fund releases are in Philippine Pesos. A slight delay in payment due to elaborate remittance procedures involving local and foreign banks may cause the Government to pay more because of unexpected and unfavorable fluctuations in foreign currency exchange rates [30].

- **Countertrade**

The AFP Modernization Law requires countertrade for procurements in excess of US\$1-million. However, a concern in countertrade is how to make the arrangement fair to both parties. Mishandled, the arrangement could cause undesirable variations in the amount and timeliness of payments that could place either party in a disadvantageous position. Miscommunications, foreign exchange fluctuations and delays in remittances may cause discrepancies in the amount of money actually received by the contractor [15].

The above issues may critically impact contract performance. As the AFPMP develops, such possible complications and problems might be encountered. Therefore, it is important that the Contracting Officers who may be tasked to handle projects for the AFPMP need to be qualified to recognize, mitigate, and resolve these potential post-award issues. Though little guidance is provided on contract implementation in Philippine laws, it still does provide a process for resolving post-award problems, which could serve as guide to the Contracting Officers.

### **C. SUMMARY**

The above analysis suggests that while a number of laws and regulations are detailed enough to guide one through the AFP equipment acquisition process, they are still basically limited to contract formation and essentially silent after contract award. This potential shortcoming forces the AFP to rely on various acquisition regulations for contract administration.

Ironically, there exists a number of post-award issues expected and needing to be addressed once modernization projects are started. Mishandled, this would mean very costly mistakes for the AFP. In spite of this, the fact remains that no qualified individual is assigned to handle contract negotiation and administration. This does not bode well for

the Program since someone qualified has to be in place to be responsible in handling these concerns. Integrating Contracting Officers into the AFPMP, therefore, may be a move into the right direction. While having qualified Contracting Officers working within the AFP procurement system is not a one hundred percent guarantee that everything will work out to the best advantage of the Government, these qualified Contracting Officers would still be in the best position to handle these various concerns.

The next chapter will introduce the idea of having Contracting Officers involved in the equipment acquisition process of the AFPMP. It presents the Contracting Officer's responsibilities in contract execution and administration. It also presents the manner of selection, appointment, and associated career paths, education and training needed to qualify to competently handle the intricacies of the said contracts.

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## **V. THE CONTRACTING OFFICER FOR THE AFPMP**

### **A. INTRODUCTION**

The preceding chapters demonstrate that the existing laws, rules and regulations governing procurement in the AFP, to include the AFPMP's equipment acquisition process, are at best insufficient to provide proper guidance in administering the said processes. Moreover, little guidance is provided to administer its modernization contracts. Colonel Orlando B Beltran, Acting Director of the Defense Modernization Office at DND, confirmed this during one telephonic interview conducted with him:

The rules and regulations governing equipment acquisition in the AFPMP are still evolving. So far, we see that some Executive Orders (EO) and their implementing rules and regulations, though not inconsistent, do not necessarily support each other. This is currently being corrected. Our office is involved in the preparation of a draft EO that we hope would synchronize all these [processes]. Hopefully, contract management issues would be covered [in it].

Presently, the AFP Major Services have to look into different sets of regulations from different Government agencies in order to implement the contracts according to the intentions of the AFP Modernization Act. Not one of the regulations provides a complete and definite guidance on whose shoulder would rest the responsibility of contract management as is required in the AFPMP.

DC 1 provides details on how to formulate contracts, but does not give guidance on how to administer the contracts except for the preparation of the Program Status Report (PRSR). PD 1594 calls for the creation of the PBAC and emphasizes pre-qualification; but like the Government Accounting and Auditing Procedure of the Commission on Audit (COA), though providing a comprehensive procedure for contract administration, is generally limited to construction contracts. Other EOs such as EO 164 and the NEDA Board-approved Guidelines, which governs contracts on consultancy services, and EO 120, which governs countertrade arrangements, did not touch on contract administration. Other sets of guidelines such as the Project Management Circular of each Major Service, are limited to monitoring production processes and standards.

Only EO 262 provides the most detail on contract award and implementation. It provides guidelines on the creation of the BACs that emphasizes post-qualification of bids. It provides guidelines on the basic content of the procurement plan and guidelines on bid evaluation and comparison, among others. However, it makes no mention of Contracting Officers in the conduct of contract administration.

The limitations of the AFP Contract Administration are evident. The system is fragmented, liable to misinterpretation and difficult to implement. It is incomplete and only marginally applicable for major system acquisitions. In essence, the AFP has no working system for administering its modernization contracts. It only has a mix of rules from different agencies that was forced on it by RA 7898.

Under the AFPMP, projects for contracting will range from small to high-ticket items, which will invariably result in single or multi-year contracts. Whatever it would be, government entities involved are ethically responsible to ensure that public funds spent accrue to the public's interest. They must act in accordance with that responsibility.

This chapter introduces the idea of having Contracting Officers involved in the equipment acquisition process of the AFPMP. It presents the Contracting Officer's responsibilities in contract planning, execution and administration. It also presents the manner of selection, appointment, and associated career paths, education and training needed to qualify to competently handle the intricacies of said contracts.

## **B. CONTRACTING LIMBO**

Pertinent laws applicable to the AFPMP's equipment acquisition process were mentioned in DC 1. These include: a) PD 1594, which serves as guide for infrastructure and other construction contracts under the AFPMP and emphasizes pre-qualification; b) EO 262, which govern procurement contracts for goods and supply and emphasizes post-qualification; and c) EO 164 and the NEDA Guidelines, which covers consultancy services.

Also, DC 1 describes how the Major Services would organize their respective PMTs, each of which shall be responsible for a single procurement project in all its stages, except the contract negotiation stage. PMTs shall be responsible for the

formulation of the Circular of Requirements (COR) and Bid Evaluation Plan (BEP). It will be the BAC, created at the GHQ level, which shall be in charge of contract negotiation – even if the members have little or no training in negotiations at all.

Though the IRR for EO 262 has directed that the BACs be created for specific projects' contract negotiation, the decisions of the BAC pertaining to the award of contract are merely recommendatory subject to the final approval/authority of the SND. Moreover, the process is limited to contract formation and essentially ends after contract award.

Upon approval of the contract, the SND shall issue to the winning bidder the Notice to Proceed. Provisions in procurement contracts to the contrary notwithstanding, such contracts shall be effective only upon the issuance of the Notice to Proceed. In case of multi-year contracts, the SND, through the President of the Philippines, shall submit copies of the approved contract to Congress, through the Chairmen of the Senate committees on National Defense and Security and Finance and the Chairmen of the House Committees on National Defense and Appropriations, to enable Congress to appropriate funds for the contract, pursuant to Section 9(b) and ( c ) of RA 7898. [11: Art 3].

Depending upon the value and complexity of the awarded project, day-to-day management of the project (and thus, contract) are either delegated later to some junior or mid-grade officials in the Major Service for maintenance or, if the project is complex, to experts from other functional fields who are called in to provide technical, financial, legal, and/or operational expertise. The point here is that, entities tasked to handle contract post-award administration/management are assigned typically after award on an ad hoc basis.

As a result, the Major Services (or end-users organization) may lose valuable corporate knowledge and team synergy when these teams are disbanded. Additionally, the lack of formal contracting and business training for members of the PMT and BAC, coupled with the lack of properly documented procurement processes/procedures, may adversely impact acquisition efficiency and effectiveness.

Contracting Officers with a good understanding and properly applying associated laws, regulations and processes, will have a tremendous potential impact on the Government's ability to successfully equip, modernize and support the AFP. Therefore, it is critical that the Defense Department leadership selects contracting personnel carefully and, more importantly, provide those individuals with the necessary support, training, and tools to accomplish their mission [14].

Considering the complicated set-up described above, it will be difficult to have a Contracting Officer set-up similar to that of the U.S. where the Contracting Officer would ideally be present with the project from its inception to termination. Based on the current set-up of the PMT vis-à-vis the BAC, what could be done is to have a Contracting Officer member added to the composition and initially assigned with the PMT at the Major Service level during project definition. During the contract negotiation stage when the PMT goes to the sideline while the BAC at GHQ takes over, the same Contracting Officer shall sit as a member of the said BAC. Only later, during post-award contract administration, will the Contracting Officer go back to the same PMT at the Major Service level to handle the project.

As Colonel Orlando B Beltran of the DMO said during one telephonic interview conducted with him:

Though earlier overlooked, we now realize the need for a Contracting Officer during the project definition stage to help in the formulation of the BEP. This same Contracting Officer should also be with the BAC during the contract negotiation to provide for continuity and preserve the spirit of the project itself. The SOPs (Standing Operating Procedures) should be changed accordingly.

Truly, it will be difficult to overhaul the existing process that was put in place in compliance to existing laws and statutes. However, the functions of the Contracting Officer can still be integrated into the current process – but with some modifications in the regulations and statutes needed.

A quick look at the present RA 7898 and its implementing guideline, DC 1, together with other applicable Philippine regulations and statutes show the non-existence -- and therefore, non-involvement -- of Contracting Officers in Government procurement

processes. One of the many areas needing to be addressed to fully integrate Contracting Officers into the process, and which may be another thesis area for study, involves the determination of the contract value at which the Contracting Officer may be authorized to enter into. Currently, the law requires the SND to be the sole signatory to all AFPMP contracts, regardless of amount.

The following section will provide a brief overview of the recommended processes and controls as they relate to: (1) Contracting Authority, (2) Contracting Officer Authority, (3) Contracting Officer Responsibility, (4) Contracting Officer Appointment, and (5) Contracting Officer selection. Hopefully, it can serve as a future reference for those who might want to further rationalize the equipment acquisition process for the AFPMP.

The following sections are patterned after the report made by an NPS team formed specifically to look into the possibility of setting up a National Acquisition Strategy for the Polish Ministry of National Defense [24]. This report is helpful in the sense that there is a similarity in the equipment acquisition procedure of the Philippines with that of Poland. Consequently, proposals recommended therein were looked into for possible applicability to the Philippines setting.

### **C. PROCESSES AND CONTROLS**

As envisioned, the Contracting Officer manages the documentation and helps in the process of contract planning and execution. This person must be trained, formally appointed, and given the requisite authority to enter into, administer and/or terminate contracts and make related determinations and findings. The position is important because the legal, business, and financial functions of procurement come together in the execution of the contractual agreement, a process that must be effectively managed by a trained professional. The education and training requirement for this position are identified. Some of the acquisition functions related to this position include: market research, acquisition planning, source selection planning/execution, negotiation planning/execution, contract formation/award, post-award contract administration, business and supplier management, contract close-out, and acquisition/contracting process innovation.



Contracting Officers are key business advisors in the equipment acquisition process. Not only do they help ensure that the AFP's needs are satisfied in terms of cost, quality and timeliness, they are also responsible for : 1) promoting competition, 2) minimizing administrative costs; and 3) conducting business with integrity, fairness and openness. Additionally, they should take the lead in encouraging business process innovations and ensuring that business decisions are sound.

### **1. Contracting Authority**

Unless specifically prohibited by another provision of law, authority and responsibility to contract for authorized supplies and services should be vested on the head (leader) of the agency. For a huge agency like the Defense Department, necessity dictates that it should not only be the SND that must have this contracting authority but also the agency heads under him, i.e., the CSAFP and the Major Service Chiefs. As necessary, the agency heads should be given the authority to establish contracting activities to support their agency mission and delegate broad authority to manage the agency's contracting functions to heads of contracting activities under their jurisdiction.

Only duly appointed Contracting Officers acting within the authority granted by law and the Defense Department could then enter into contracts on behalf of the Government. At the Major Services level, it may be desirable to designate a relatively small number of high-level officials as Contracting Officers solely by virtue of their positions. Contracting Officers below the level of a head of a contracting activity should be selected and appointed in writing.

Performance evaluation techniques such as "rating systems" in combination with "management by objectives" could then be used to effectively "police the ranks" of Contracting Officers under them. Such a system would, in general, be accurate in allocating rewards and penalties, enhance future performance, measure commitment, and identify training and development needs. Procurement management reviews could also be used for this purpose. Such techniques would be useful for identifying candidates for promotion, although it would not necessarily be good at predicting future performance.

To facilitate the efficient use of resources, agency heads should be given the authority to mutually agree to assign contracting functions and responsibilities from one

agency to another and/or create joint or combined offices to exercise acquisition functions and responsibilities [24].

## **2. Contracting Officer Authority**

Contracting Officers should have the authority to enter into, administer, or terminate contracts and make related determinations and findings. “Determinations and findings” refers to a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. A “determination” is a conclusion or decision supported by “findings”. The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

Contracting Officers may bind the Government only to the extent of the authority delegated to them. Contracting Officers should receive from the appointing authority clear instructions in writing regarding the limits of their authority. Information on the limits of the Contracting Officers’ authority should be readily available to the public and agency personnel.

No contract should be entered into unless the Contracting Officer ensures that all requirements of law, executive orders, regulations, and all applicable procedures, including clearances and approvals, have been met [17: 1.602-1]. This includes the issue on countertrade.

## **3. Contracting Officer Responsibilities**

Contracting Officers should be responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the Government in its contractual relationships. In order to perform these responsibilities, Contracting Officers should be allowed wide latitude to exercise business judgment. Contracting officers should:

- a. Ensure that they operate within their authorized authority;
- b. Ensure that sufficient funds are available for obligation;
- c. Ensure that contractors receive impartial, fair, and equitable treatment, and

Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate [17: 1.602-2].

#### **4. Contracting Officer Appointment**

Agency heads should establish and maintain a procurement career management program and a system for the selection, appointment and termination of appointment of Contracting Officers. Agency heads or their designees should be able to select and appoint Contracting Officers and terminate their appointments. These selections and appointments should be consistent with standards for skill-based training in performing contracting and purchasing duties.

Contracting Officers should be appointed in writing and provided a Certificate of Appointment, which should state any limitations on the scope of authority to be exercised, other than limitations contained in applicable law or regulation. Appointing officials should maintain files containing copies of all appointments that have not been terminated.

Termination of a Contracting Officer appointment should be by letter, unless the Certificate of Appointment contains other provisions for automatic termination. Terminations may be for reasons such as reassignment, termination of employment, or unsatisfactory performance. No termination should operate retroactively [17: 1.603-3; 24].

#### **5. Contracting Officer Selection**

In selecting Contracting Officers, the appointing official should consider the complexity and monetary value of the acquisitions to be assigned and the candidate's experience, training, education, business acumen, judgment, character, and reputation. Examples of selection criteria include:

- a. Experience in Government contracting and administration, commercial purchasing, or related fields;
- b. Education or special training in business administration, law, accounting, engineering, or related fields;
- c. Knowledge of acquisition policies, procedures, laws and regulations;

- d. Specialized knowledge in the particular assigned field of contracting; and
- e. Satisfactory completion of acquisition training courses [17: 1.603-2].

To have all these in place, it is clear that existing procurement laws, regulations and processes need to be changed to permit more system flexibility, innovation and empowerment of acquisition team members. Right now might be a good time to incorporate the ideas set forth here through the SOPs being formulated at GHQ (to put into action the guidelines stipulated in the IRR to EO 262). Among these SOPs would include amendments pertaining to or changes in the composition of the PMT, BAC and the AFP Modernization Board [1].

The functions of the Defense Modernization Office of the DND [13] may be expanded to enable the conduct of periodic “Procurement Management Review” to increase insight into acquisition activities and explore opportunities for system improvement. Also at DMO, other activities can be integrated such as contract administration feedback mechanisms to enhance overall acquisition system efficiency and effectiveness.

#### **D. ASSOCIATED CAREER PATHS, EDUCATION AND TRAINING**

As acquisition becomes more complex in the AFPMP, the roles of acquisition managers become increasingly critical. Education and training in program management and contracting should be established.

In addition to having strong technical backgrounds, the acquisition managers will need business and leadership skills to successfully manage Modernization Programs. A model acquisition system for the AFPMP, such as was developed by LCDR Cesar C. Taccad in his Master’s thesis, *A Model of Contract Administration for the AFP Modernization Program*, would require a more responsible role for procurement personnel than they have generally exercised in the past. An empowered system calls for more informed judgments about what is available in the global marketplace and about opportunities for competition. It calls for earlier participation by procurement personnel, as the Government’s business managers, in the development of acquisition strategies. Further, it calls for reducing the micromanagement and replication of activities along the different levels of the AFPMP’s equipment acquisition process that results from existing

laws, rules and regulations. If attained, this would permit broader latitude for judgment, while holding acquisition managers accountable for the results of decisions within their control.

Acquisition specialties need to be established. Offhand, such specialties may either be integrated (or separated as a distinct line as a “Contracting Family”) from the existing “Logistics family” and “Finance family” in the AFP. Needless to say, this could be dissected and examined as another thesis area. What is emphasized at this stage is that education and training in the acquisition specialties may encompass all the functional areas that cover the equipment acquisition process. Program management, contracting, systems engineering, manufacturing and quality assurance, logistics, financial management, and testing are a few of these functional areas. Specialists from each functional area need to have knowledge and experience in their functional area and also have a general knowledge of acquisition, specifically, in the areas of project management, contracting, financial management, and integrated product and process development. Basic instruction in these areas would be embedded in the education and training plan for each functional specialty.

### **1. Comprehensive Education Support System**

To attain a truly responsive equipment acquisition process, a comprehensive education and training support system is necessitated. Such a system would be comprised of three principal phases, namely: initial education, advanced education and training, and senior education and training.

#### ***a. Phase I – Initial Education***

The initial education phase would consist of civilian undergraduate business educational institutions from which both junior military officers and civilians would be recruited. Baccalaureate programs such as those from the Philippine Military Academy, University of the Philippines, or from any of the other numerous reputable universities and colleges are quite capable of supplying finance, budget, management and contract personnel for the DND-AFP personnel pool. They could form as the main source of the acquisition corps, and would form the core group of the future leaders within the acquisition workforce. After recruitment, specialized training in military acquisition management could be developed within the AFP education structure. The

Major Services' Training Commands would be appropriate institutions for this. It would be very favorable for this thrust if the DMO can initiate the development of a "Defense Acquisition Training Institute" capable of conducting specialized training for initial entry personnel and more advanced professional development for mid-career personnel.

While initiating creation and possibly overseeing the conduct of a "Defense Acquisition Training Institute" is outside the scope of the DMO's functions, this could be another thesis area that could be examined – an expanded role for DMO, which could possibly even transition into a future Defense Acquisition Office similar to the DAO of the U.S.

***b. Phase II – Advanced Education and Training***

Phase II would consist of graduate level education programs, primarily at the master's degree level. This phase can be supported by Philippine institutions of higher education such as the Command and General Staff College, by external civilian and military schools such as the Naval Postgraduate School (NPS), business schools such as the Asian Institute of Management, and other reputable civilian universities such as the University of the Philippines. Advanced professional training to support mid-career professional development already exists at several US military institutions, e.g., NPS and the Defense Acquisition University. Indeed, it would be very fruitful for the DND if in the future, the DMO would develop such capabilities to conduct graduate level education. This may be attained through the envisioned "Defense Acquisition Training Institute", which may be a forerunner of a future Defense Acquisition University for the Philippines.

***c. Phase III – Senior Education and Training***

Phase III education supports the requirement for senior leadership in the DND acquisition system. Educational support and training programs that support the integration of knowledge of the various acquisition sub-specialties, the process of military acquisition as national strategic resource management, and a complete understanding of the military planning process should be investigated. Education at the National Defense College of the Philippines (NDCP) and experience in key positions should be a prerequisite for those selected for senior leadership positions. Additional postgraduate level education may be developed to address resource management and economics subjects. An "Executive Education Institute" may likewise be established in

the future, with its pool of highly qualified trainers coming from academe (through the business graduate schools) and from the envisioned “Defense Acquisition Training Institute”. Alternatively, the NDCP and the University of the Philippines may wish to establish a joint program where a broad-based military-civilian education partnership would draw upon expertise and experience from both sectors to assist senior managers in improving their decision-making skills.

A certification program should supplement Phase II educational opportunities. Training, education, and experience would be tested by a certification examination. The examination would set standards for time on the job and other qualifications, e.g., for Level I, two years acquisition experience, and a baccalaureate in business, finance, or other related field; for Level II, five years experience, and an advanced training program; and for Level III, 10 years experience, and a master’s degree level education in a related field [24].

## **2. Other Training**

Each of these levels for acquisition professionals would be supported by defining specific academic programs and/or training courses that would meet the requirements set for specialty or sub-specialty areas, e.g., program management, contracting, systems engineering, finance and budgeting. Here, it would be necessary to establish both an education coordinator who would certify external education and training facilities as meeting DND-stated requirements, and an examination/certification board that prepares, reviews, and administers the exams at each successive level. This process may be incorporated into future certification functions of the envisioned “Defense Acquisition Training Institute”. Meanwhile, DMO shall continue to build its expertise in appropriate subject areas.

Likewise, everyone involved in the procurement and contract management process should receive education and ongoing training in ethics and fraud detection. Ethical conduct is crucial to maintaining the public trust and confidence in the AFPMP’s equipment acquisition system. Accordingly, these concepts should be incorporated in all certification, training and education systems and programs.

The establishment of an education and training program is multifaceted. The DND-AFP's current thrust of developing a core of personnel with the necessary education and training to initiate the educational program, such as acquiring master's degrees in Acquisition and Contract Management (815) and Systems Acquisition Management (816) at the NPS, is a move in the right direction. These individuals would, upon their return to the Philippines, establish a program management education curriculum. A complement of acquisition-trained personnel would eventually result in most of them receiving the necessary instruction in the Philippines.

Also, the current International Defense Acquisition Resources Management (IDARM) Program regularly being conducted by NPS in the Philippines provides DND-AFP personnel the necessary introduction to the basic principles of program management.

Ultimately, principles of program and contract management would need to be embedded in functional curricula for acquisition personnel involved in project management. Further, education in financial management and logistics management should be vigorously pursued and encouraged at the graduate and postgraduate levels.

#### **E. SUMMARY**

Because of the provisions of the law, it will take a long and tedious process before a project envisioned at the Major Service level will be realized. It needs to be conceptualized and planned at the lower level first. Later on, this is negotiated at the GHQ level before it is awarded. The SND, who signs the contract, "performs" the role of Contracting Officer. Since the SND is the signatory to the contract, it cannot be avoided that all documents related to every individual project would be scrutinized at the DND level. Consequently, this will not only cause expected delays in timetables but more so, the possibility of the end-user not getting the items as specified.

With Contracting Officers' positions and contracting activities established and integrated into the AFPMP equipment acquisition process, it is hoped that these potential problems will be corrected. Not only will the equipment acquisition process be more efficient and effective, it will also prevent the loss of valuable corporate knowledge and team synergy accumulated by the PMTs and BACs when these teams are disbanded.



Contracting Officers and associated laws, regulations and processes, will have a tremendous potential impact on the Government's ability to successfully equip, modernize and support the AFP. Therefore, it is critical that Defense Department leadership select contracting personnel carefully and, more importantly, provide those individuals with the necessary support, training, and tools to accomplish their mission.

Contract management should be considered a core competency of the Defense Department. Contracting activities should not be set up as just subsidiary administrative functions. Considering the very large financial outlay of the AFPMP and other future AFP procurements, contract management is a responsibility of immense magnitude.

While the DND-AFP and subordinate agencies does not need to know how to produce the products or services in question, it does need to do the following well:

- a. Develop a business strategy, specifying requirements for what will be bought, and choosing an appropriate contract arrangement and incentives;
- b. Select the right suppliers; and
- c. Administer the contract once signed [21].

The U.S.' Federal Acquisition Regulation (FAR) System, particularly the provisions of Subpart 1.102-3 and 1.102-4, would serve as a good guide for the DND-AFP if it elects to establish and integrate the Contracting Officer position into the AFPMP equipment acquisition process.

The next chapter will present the conclusions and recommendations of this study.

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

### **A. INTRODUCTION**

This chapter presents the findings and recommendations of the study. So far, this research has provided valuable information and insight on the AFP Modernization Program with the presentation of challenges associated with contract management and program implementation. Chapter II examined the relevant acquisition laws and regulations, and the inadequacy of the AFP equipment acquisition and contracting process. Chapter III reviewed the general procurement and contract administration processes provided by Philippine laws, and looked at some possible post-award problems that may arise and may require handling by a qualified Contracting Officer. Chapter IV then presented an analysis and interpretation of information gathered from the study covered by the two preceding chapters. Having examined the above environment, Chapter V then presented the need to have Contracting Officers in the AFPMP in order to satisfactorily handle the complex contracts that are expected to be awarded under the Program's equipment acquisition process. Having consolidated all the knowledge gained from the research, the study now presents its conclusions.

### **B. CONCLUSIONS**

Based on the data and information presented, analyzed and interpreted in the preceding chapters, the following are the conclusions of the study:

1. Projects for the AFPMP's equipment acquisition process would be most cost-effectively handled by having qualified Contracting Officers assigned to each project:

- a. Since the PMTs are not formed or sufficiently involved early enough in the contract formation process, this shortcoming places the PMTs, and the AFP as a whole, at a disadvantage when dealing with the better-trained and more informed contractor representatives in the execution of AFP contracts. To correct this, the Contracting Officers must be assigned with the project continually, from its project definition phase (via membership with the PMT) at the Major Service level, through its

contract negotiations phase at the GHQ level (via the BAC), and then back to the same PMT at the cognizant Major Service for contract implementation;

b. The Contracting Officers must be knowledgeable of their responsibilities and be aware of and mitigate post-award problems that may arise out of the AFPMP project. Considering that procurement through the AFPMP would be a new experience and expensive one for the AFP, the Contracting Officers must see to it that the AFP would get the most value out of its meager financial resources;

c. Rationalization of individual projects being contracted out and developed through correct interfacing would be better attained if the Contracting Officers remain in full operational control of the Major Service modernization offices, even if they should fall under administrative control of other committees, such as when they become members of the BAC.

2. In selecting Contracting Officers, the appointing official should consider the complexity and monetary value of the acquisitions to be assigned and the candidate's experience, training, education, business acumen, judgment, character, and reputation. Examples of selection criteria include:

a. Experience in Government contracting and administration, commercial purchasing, or related fields;

b. Education or special training in business administration, law, accounting, engineering, or related fields;

c. Knowledge of acquisition policies, procedures, laws and regulations;

d. Specialized knowledge in the particular assigned field of contracting; and

e. Satisfactory completion of acquisition training courses.

3. The present Contract Administration System in the AFP is fragmented and inadequate to address the post-award issues associated with the AFP Modernization Program. The Philippine military and defense establishment actually does not have a comprehensive system of contract administration. Not one of the Philippine laws, even

in combination with one another, totally cover the different aspects of contract administration peculiar to the equipment acquisition process, let alone major system acquisitions under the AFPMP. With these limitations then, all actions by Contracting Officers must be regulated by Philippine Government contracting guidelines, such as those stipulated in EO 262 and DND Implementing Guidelines based on the authority of the AFPMP.

4. The AFP, in general, has limited resources for full oversight of contract performance. It lacks personnel, facilities, funding and skills to conduct such performances as on-site production surveillance, product quality testing and audit of contractor production cost, to name a few.

5. There is currently no formalized education and training program within the Philippines that address the skills required to successfully award and administer complex contracts.

### **C. RECOMMENDATIONS**

In view of the above, this study recommends the following:

1. *Representation by DND to Congress recommending the amendment of certain provisions of the AFP Modernization Act, RA 7898, that would allow for the clear establishment and incorporation of qualified “Contracting Officer” position(s) into the AFP equipment acquisition process.* Incorporating these provisions clearly into the law would empower qualified Contracting Officers to do the tasks required of them. While reinforcing the Government’s policy of transparency, it would also rationalize and minimize apparent disconnects in the present AFP equipment acquisition process, such as the discontinuity borne out of having separate membership compositions in the PMTs and BACs, and the expected delays resulting from the need to have the SND to sign each and every contract under the Program regardless of amount, to name a few.

2. *The DND should revise its DC 1 to incorporate important provisions for contract administration or it could elect to come up with another Department Circular that would prescribe guidelines for the integration of Contracting Officer(s) into the AFPMP.* The DND has enough authority under the AFP Modernization Act, RA 7898, to revise DC 1 since Section 14 of the said Act requires the DND and the AFP to strengthen

its systems and procedures for equipment and major systems acquisition pursuant to the AFPMP. Since this research revealed that the Circular is inadequate and lacks some provisions to allow for qualified Contracting Officers to engage in contract negotiation and management in the AFPMP's equipment acquisition process, DND could further strengthen DC 1 by including comprehensive procedures for the effective and holistic administration of AFP contracts. On the other hand, DND may elect to have a new Department Circular established that would prescribe guidelines for the integration of Contracting Officer(s) into the AFPMP equipment acquisition process. A sample Department Circular pertaining to this is attached as Appendix "B".

3. *Establish and incorporate "Contracting Officer" position(s) into the AFPMP equipment acquisition process by having said positions added to the present compositions of the PMT and BAC.* Having qualified Contracting Officers for the AFPMP was introduced in Chapter IV. It presented the qualified Contracting Officer's responsibilities in contract execution and administration, selection and appointment. It also presented the associated career paths, education and training the qualified Contracting Officer needs to qualify to competently handle the intricacies of the said contracts.

4. *The strengthening of the DMO with the end in view of expanding its mission and function in the future into a "Defense Acquisition Office",* which will cover more than just the procurement of modernization-related major systems and equipment. It should cover the various fields in contract management such as the promulgation of appropriate procedure for manpower development and training to procedures for the resolution of claims and contract disputes within the DND, to name a few.

5. *Establish formalized education and training programs within the AFP that address the skills required to successfully award and administer complex contracts.* This is described in detail in the preceding chapter.

## **D. SUMMARY AND REVIEW OF RESEARCH QUESTIONS**

### **1. Primary Research Question**

*Is there a need to have qualified Contracting Officers in the execution and administration of contracts under the AFPMP?*

In Chapter II, the research revealed that the present contract administration system in the AFP is too fragmented and inadequate to address post-award issues associated with the AFPMP. Likewise, Chapter III showed that Philippine Government procurement planning and contract administration guidance, while detailed in some aspects, is still insufficient to cover all issues governing contract administration. Responsibilities for management of contracts are inferred on terms and conditions of the contract itself with no mention of specific individuals or offices being primarily responsible for it. These were analyzed in detail in Chapter IV, with certain post-award issues that are likely to be encountered in the process of contract administration being presented. In Chapter V, the position of Contracting Officer was recommended to be established and integrated into the AFPMP equipment acquisition process to ensure that qualified personalities are identified and in place to responsibly handle such crucial functions as contract management.

## **2. First Subsidiary Question**

*What is the present structure of contract execution and administration in the AFPMP?*

As indicated in the answer to the primary research question, this study revealed that the present structure of contract execution and administration in the AFPMP is at best inferred into the terms and conditions of the contracts that shall be entered into by the AFP. There exists no clear structure for contract execution and administration in the AFPMP except for some guidelines, which though detailed in some aspects, are not comprehensive enough.

## **3. Second Subsidiary Question**

*What are the existing contract execution and administration guidelines in the AFP and are these satisfactory to handle the complex contracts that would result from the AFPMP?*

The Philippine military and defense establishment actually does not have its own set of guidelines to effectively and efficiently handle a comprehensive system of contract administration. It has to rely on other Government regulations to guide it through contract implementation. None of them, even in combination with one another, totally cover the different aspects of contract administration peculiar to major system

acquisitions under the AFPMP. Thus, the recommendations stated in Section C of this Chapter have been presented. The said recommendations alone would not be enough to correct all the deficiencies mentioned above. If implemented, however, it would establish the groundwork for future changes that could further improve the AFPMP's equipment acquisition process.

#### **4. Third Subsidiary Question**

*What is the envisioned role of Contracting Officers as they handle the various contract activities?*

The envisioned role of the Contracting Officer in relation to the AFPMP EAP has been presented in detail in Chapter V. Having qualified Contracting Officers to handle the complex contracts that are expected to come out of the various AFPMP projects would come nearer to that envisioned result whereby the AFP would not only get the most value out of its meager financial resources, but moreover, ensure that terms and conditions of the contracts would be attended to in detail by the qualified Contracting Officer.

Some of the acquisition functions related to this position include: market research, acquisition planning, source selection planning/execution, negotiation planning/execution, contract formation/award, post-award contract administration, business and supplier management, contract close-out, and acquisition/contracting process innovation.

Contracting Officers are key business advisors in the equipment acquisition process. Not only do they help ensure that the AFP's needs are satisfied in terms of cost, quality and timeliness, they are also responsible for : 1) promoting competition, 2) minimizing administrative costs; and 3) conducting business with integrity, fairness and openness. Additionally, they should take the lead in encouraging business process innovations and ensuring that business decisions are sound.

#### **5. Fourth Subsidiary Question**

*What are the associated career paths, education, training and certification programs needed to establish the "Contracting officer" position within the AFP?*

As presented in Chapter V, the study suggests that a “Contracting family” be established similar in spirit to other existing “families” in the AFP such as the “Logistics family” and the “Finance family”. These are really specialized corps within the AFP structure, which, though informal, would guide the Contracting Officers to be qualified in their chosen career by following certain career paths, education, training, and certification programs.

#### **E. SUGGESTED AREAS FOR FURTHER RESEARCH**

1. Refine the process whereby Contracting Officers would be fully integrated and functional in the AFP equipment acquisition process, such as: a) establishing the mechanics of how a Contracting Officer could be placed administratively under various units in the AFP but centrally and operationally under the DND through the DMO; and b) determining the contract value at which a Contracting Officer may be authorized to enter in contracts, to name a few.

2. Examine and validate the expansion of the present DMO into a future “Defense Acquisition Office” that would go beyond handling the procurement of systems/equipment within the AFPMP.

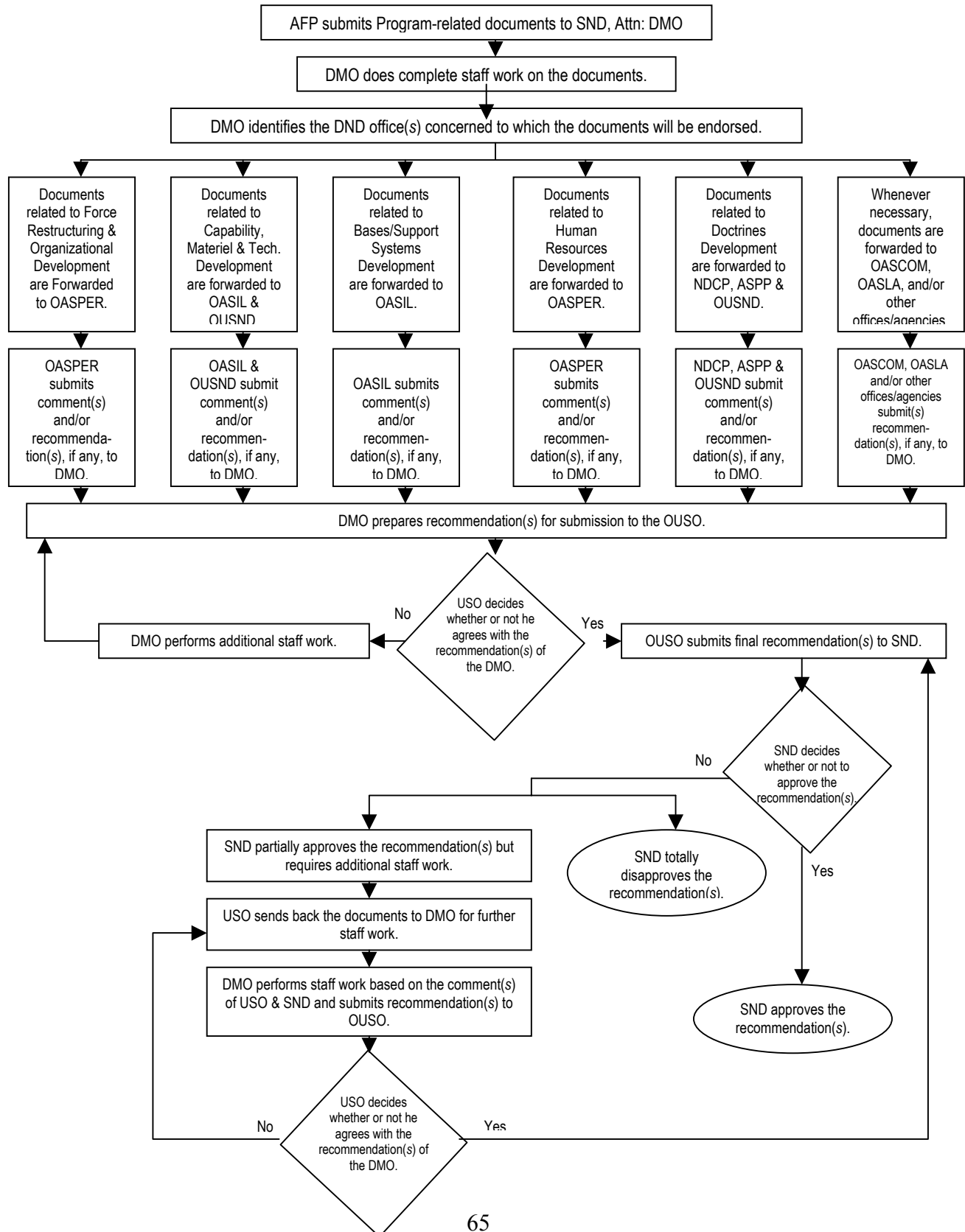
3. Expound on the acquisition specialties to be established that may encompass all the functional areas that cover the equipment acquisition process. Such specialties may either be integrated (or separated as a distinct line as the “Contracting Family”) with the existing “Logistics Family” and “Finance family” in the AFP.

4. Define and validate the presented career paths, education, training and certification programs that would guide the professional development of Contracting Officers.



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# **APPENDIX A: APPROVAL OF AFP MODERNIZATION PROGRAM-RELATED DOCUMENTS AT THE DND LEVEL**



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1.1.3 DND Circular No. 01 dated March 6, 2000 prescribes the “Implementing Guidelines, Rules and Regulations of the AFP Modernization Program,” pursuant to Section 4 of the AFP Modernization Act. It shall govern the implementation of all programs and projects under the Program.

#### Article 2.0 Scope and Application

This Department Circular shall apply to the procurement of: (a) goods, supplies, materials and related services; (b) civil works; and (c) consulting services, primarily to the Armed Forces of the Philippines Modernization Program.

#### Article 3.0 Statement of Policy

It is the policy of the Department of National Defense to have qualified Contracting Officers actively involved in the management of procurement contracts under the AFP Modernization Program.

#### Article 4.0 General Guidelines

4.1 Qualified Contracting Officers are key business advisors in the equipment acquisition process. Not only do they help ensure that the AFP’s needs are satisfied in terms of cost, quality and timeliness, they are also responsible for:

- a) promoting competition;
- b) minimizing administrative costs; and
- c) conducting business with integrity, fairness and openness.

4.2 Contracting Officers shall take the lead in encouraging business process innovations and ensure that business decisions are sound. This individual must be trained, formally appointed, and given the requisite authority to enter into, administer and/or terminate contracts and make related determinations and findings.

4.3 The position of a qualified Contracting Officer is important because the legal, business, and financial functions of procurement come together in the execution of the contractual agreement, a process that must be effectively managed by a trained professional. The education and training requirement for this position shall be identified.

Some of the acquisition functions envisioned of this position include:

- a) market research;
- b) acquisition planning;
- c) source selection planning/execution;
- d) negotiation planning/execution
- e) contract formation/award;
- f) post-award contract administration;
- g) business and supplier management;
- h) contract close-out; and
- i) acquisition/contracting process innovation.

#### Article 5.0 Contracting Authority

5.1 Unless specifically prohibited by another provision of law or authority, responsibility to contract for authorized supplies and services is hereby vested in the head (leader) of the agency. For a huge agency like the Defense Department, necessity dictates that it should not only be the Secretary of National Defense (SND) that must have this contracting authority but also the agency heads under him; i.e., the Chief of Staff of the Armed Forces Philippines (CSAFP) and the Major Service Chiefs. As necessary, the agency heads should be given the authority to establish contracting activities to support their agency mission and delegate broad authority to manage the agency's contracting functions to heads of contracting activities under their jurisdiction.

5.2 To facilitate the efficient use of resources, agency heads should be given the authority to mutually agree to assign contracting functions and responsibilities from one agency to another and/or create joint or combined offices to exercise acquisition functions and responsibilities.

#### Article 6.0 Contracting Officer Authority

6.1 Only duly appointed Contracting Officers acting within the authority granted by law and the Defense Department may enter into contracts on behalf of the government. All Contracting Officers shall be appointed in writing.

6.2 Contracting Officers may bind the Government only to the extent of the authority delegated to them. Contracting Officers shall receive from the appointing authority clear instructions in writing regarding the limits of their authority. Information on the limits of the Contracting Officers' authority shall be readily available to the public and agency personnel.

6.3 Contracting Officers shall have the authority to enter into, administer, or terminate contracts and make related determinations and findings. "Determinations and findings" refers to a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. A "determination" is a conclusion or decision supported by "findings". The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

6.4 No contract should be entered into unless the Contracting Officer ensures that all requirements of law, executive orders, regulations, and all applicable procedures, including clearances and approvals, have been met. This includes the issue on counter-trade.

#### Article 7.0 Contracting Officer Responsibilities

Contracting Officers shall be responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contracts, and safeguarding the interests of the government in its contractual relationships. In order to perform these responsibilities, Contracting Officers shall be allowed wide latitude to exercise business judgment. Contracting officers shall:

- a) Ensure that they operate within their authorized authority;
- b) Ensure that sufficient funds are available for obligation;
- c) Ensure that contractors receive impartial, fair, and equitable treatment, and
- (d) Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.

## Article 8.0 Contracting Officer Appointment

8.1 Agency heads shall establish and maintain a system for the selection, appointment and termination of Contracting Officers. Agency heads or their designees shall be able to select and appoint Contracting Officers and terminate their appointments. These selections and appointments shall be consistent with standards for skill-based training in performing contracting and purchasing duties.

8.2 Contracting Officers shall be appointed in writing and provided a Certificate of Appointment, specifying any limitations on the scope of authority to be exercised, other than limitations contained in applicable law or regulation. Appointing officials shall maintain files containing copies of all appointments that have not been terminated.

8.3 Termination of a Contracting Officer appointment shall be by letter, unless the Certificate of Appointment contains other provisions for automatic termination. Terminations may be for reasons such as reassignment, termination of employment, or unsatisfactory performance. No termination should operate retroactively.

## Article 9.0 Contracting Officer Selection

9.1 In selecting Contracting Officers, the appointing official shall consider the complexity and monetary value of the acquisitions to be assigned and the candidate's experience, training, education, business acumen, judgment, character, and reputation. Examples of selection criteria include:

- a) Experience in government contracting and administration, commercial purchasing, or related fields;
- b) Education or special training in business administration, law, accounting, engineering, or related fields;
- c) Knowledge of acquisition policies, procedures, laws and regulations;
- d) Specialized knowledge in the particular assigned field of contracting; and
- e) Satisfactory completion of acquisition training courses.



## Article 10.0 Education and Training

Section 1. As acquisition becomes more complex in the AFPMP, the roles of acquisition managers become increasingly critical. Education and training in program management and contracting shall be established. Agency heads shall establish and maintain a procurement career management program. In addition to having strong technical backgrounds, the acquisition managers, to include Contracting Officers, will need business and leadership skills to successfully manage the said Program. An empowered system calls for more informed judgments about what is available in the global marketplace and about opportunities for competition. It calls for earlier participation by procurement personnel, as the Government's business managers, in the development of acquisition strategies. Further, it calls for reducing the micromanagement and replication of activities along the different levels of the AFPMP's equipment acquisition process that results from existing laws, rules and regulations. When attained, this would permit broader latitude for judgment, while holding acquisition managers accountable for the results of decisions within their control.

### Section 2. Acquisition Specialties

Acquisition specialties shall be established. Such specialties may either be integrated (or separated as a distinct line) from the existing "Logistics family" and "Finance family" in the AFP. Education and training in the acquisition specialties may encompass all the functional areas that cover the equipment acquisition process. Program management, contracting, systems engineering, manufacturing and quality assurance, logistics, financial management, and testing are a few of these functional areas. Specialists from each functional area need to have knowledge and experience in their functional area and also have a general knowledge of acquisition, specifically, in the areas of project management, contracting, financial management, and integrated product and process development. Basic instruction in these areas would be embedded in the education and training plan for each functional specialty.

### Section 3. Comprehensive Education Support System

To attain a truly responsive equipment acquisition process, a comprehensive education and training support system is necessitated. Such a system should be comprised of three principal phases, namely: initial education, advanced education and training, and senior education and training.

#### *a) Phase I – Initial Education*

The initial education phase would consist of civilian undergraduate business educational institutions from which both junior military officers and civilians would be recruited. Baccalaureate programs such as those from the Philippine Military Academy, University of the Philippines, or from any of the other numerous reputable universities and colleges are quite capable of supplying finance, budget, management and contract personnel for the DND-AFP personnel pool. They could form as the main source of the acquisition corps, and would form the core group of the future leaders within the acquisition workforce. After recruitment, specialized training in military acquisition management could be developed within the AFP education structure. The Major Services' Training Commands would be appropriate institutions for this. To this end, the DMO shall initiate the development of a "Defense Acquisition Training Institute" capable of conducting specialized training for initial entry personnel and more advanced professional development for mid-career personnel.

#### *b) Phase II – Advanced Education and Training*

Phase II shall consist of graduate level education programs, primarily at the master's degree level. This phase can be supported by Philippine institutions of higher education such as the Command and General Staff College, by external civilian and military schools such as the Naval Postgraduate School, business schools such as the Asian Institute of Management, and other reputable civilian universities such as the University of the Philippines. Advanced professional training to support mid-career professional development already exists at several US military institutions, e.g., NPS and the Defense Acquisition University. Again, it would be very fruitful for the DND for the DMO to develop this capability to conduct graduate level education through the

envisioned “Defense Acquisition Training Institute”, which may be a forerunner of a future Defense Acquisition University for the Philippines.

*c) Phase III – Senior Education and Training*

Phase III education supports the requirement for senior leadership in the DND acquisition system. Educational support and training programs that support the integration of knowledge of the various acquisition sub-specialties, the process of military acquisition as national strategic resource management, and a complete understanding of the military planning process should be looked into. Education at the National Defense College of the Philippines (NDCP) and experience in key positions should be a prerequisite for those selected for senior leadership positions. Additional postgraduate level education may be developed to address resource management and economics subjects. An “Executive Education Institute” may likewise be established in the future, with its pool of highly qualified trainers coming from the academe (through the business graduate schools) and from the envisioned “Defense Acquisition Training Institute”. Alternatively, the NDCP and the University of the Philippines may wish to establish a joint program where a broad-based military-civilian education partnership would draw upon expertise and experience from both sectors to assist senior managers in improving their decision-making skills.

A certification program should supplement Phase II educational opportunities. Training, education, and experience would be tested by a certification examination. The examination would set standards for time on the job and other qualifications, e.g., for Level I, two years acquisition experience, and a baccalaureate in business, finance, or other related field; for Level II, five years experience, and an advanced training program; and for Level III, 10 years experience, and a master’s degree level education in a related field.

*d) Other Training*

Each of these levels for acquisition professionals would be supported by defining specific academic programs and/or training courses that would meet the requirements set for specialty or sub-specialty areas, e.g., program management, contracting, systems engineering, finance and budgeting. Here, it would be necessary to establish both an

education coordinator who would certify external education and training facilities as meeting DND-stated requirements, and an examination/certification board that prepares, reviews, and administers the exams at each successive level. This process may be incorporated into future certification functions of the envisioned “Defense Acquisition Training Institute”. Meanwhile, DMO shall continue to build its expertise in appropriate subject areas.

#### Section 4. Ethics and Fraud Detection Training

Everyone involved in the procurement and contract management process should receive education and ongoing training in ethics and fraud detection. Ethical conduct is crucial to maintaining the public trust and confidence in the AFPMP’s equipment acquisition system. Accordingly, these concepts shall be incorporated in all certification, training and education systems and programs

#### Article 11.0 Contracting Officer Integration

11.1 Department Circular No. 1 calls for the creation of Project Management Teams (PMTs), each of which shall be responsible for a single procurement project in all its stages, except the Contract Negotiation stage. On the other hand, Section 5 of Executive Order 262 requires the creation of a BAC to determine the eligibility of prospective bidders, conduct bidding, evaluate bidding results, and recommend award of contract during a project’s contract negotiation phase. The BAC shall not handle contract administration.

11.2 As there exist provisions for amending the composition of both the PMT and BAC for the purpose of strengthening the said committees in the pursuit of their respective missions, a Contracting Officer member is hereby added to both committee compositions, as follows:

a) For the Project Management Team – Its minimum composition shall include the:

Project Manager, who shall also be the Operations Officer of the project;

Technical Officer;

*Contracting Officer*, and

Logistics Officer.

The Major Service Commanders shall prescribe additional members if necessary. For Joint Service PMTs, the AFPMB shall prescribe the PMT's composition.

b) For the Bids and Awards Committee -

Chairman (regular) – At least the third ranking official of the Agency;

Executive Officer and Secretary (regular) – Legal Officer of the office/agency/corporation. The Administrative Officer of the agency concerned may be the Executive Officer and Secretary of the BAC when the agency does not have a legal officer in its plantilla positions, or when the Legal Officer is unavailable;

Member (regular) – Technical member designated by the Head of Agency or his authorized representative;

*Member (regular) – Contracting Officer member designated by the Head of Agency or his authorized representative during contract negotiation phase;*

Member (provisional) – With knowledge and experience in the goods/supplies/material to be bid, duly designated by the Head of Agency or his duly authorized representative on a project-to-project basis;

Member from the private sector – To ensure the transparency of the process, one private sector qualified representative each from the following organizations: a) Philippine Chamber of Commerce; and b) End-user or non-governmental organization to be designated by the Head of office/agency/corporation concerned; Both representatives shall serve only as observers.

11.3 The Contracting Officer member added shall initially be assigned with the PMT at the Major Service level during project definition and shall be responsible for all functions and activities required of a qualified Contracting Officer. During the contract negotiation stage when the PMT becomes inactive and the BAC at General Headquarters (GHQ) takes over for the project's contract negotiation phase, the same Contracting Officer shall join as a member of the said BAC, again to fulfill all the functions and responsibilities required of a qualified Contracting Officer. At the dissolution of the

BAC following the project's contract approval, the Contracting Officer shall go back to the same PMT at the Major Service level to administer the contract.

11.4 To permit more system flexibility, innovation and empowerment of Contracting Officers, respective Defense Department agencies shall, effective immediately, initiate review of existing rules and regulations governing procurement processes to incorporate the ideas set forth herein. Implementing SOPs shall be formulated at GHQ to put into action the guidelines stipulated in this Circular.

#### Article 12.0 Oversight and Management

The functions of the Defense Modernization Office of the DND shall be expanded to permit conduct of periodic "Procurement Management Reviews" to increase insight into acquisition activities and explore opportunities for system improvement. Also at DMO, contract administration activities shall be integrated so that a contract administration feedback mechanism to enhance overall acquisition system efficiency and effectiveness could function as desired.

#### Article 13.0 Final Provisions

13.1 Separability Clause – If any provision of this Circular is declared invalid by a competent court or tribunal, the remaining provisions hereof, unaffected thereby, shall remain valid and binding.

13.2 Effectivity – This Circular will take effect fifteen (15) days from the date of its submission for publication with the Office of the National Administrative Register, University of the Philippines Law Center.

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Secretary

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